No. 9918

United States

Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC GAS AND ELECTRIC COMPANY, a Corporation,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

Transcript of Record

In Four Volumes

VOLUME I

Pages 1 to 471

Upon Petition to Review an Order of the Securities and Exchange Commission.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States Circuit Court of Appeals
for the Ninth Circuit

No. .....

PACIFIC GAS AND ELECTRIC COMPANY,
Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

CERTIFICATE OF TRANSCRIPT OF RECORD

Pursuant to the provisions of Section 24(a) of the Public Utility Holding Company Act of 1935,

I, Francis P. Brassor, Secretary of the Securities and Exchange Commission, do hereby certify that the annexed volumes numbered I to VI, inclusive, constitute the transcript of the record of the proceedings had before the Securities and Exchange Commission in the matter of Pacific Gas and Electric Company, Great Western Power Company of California, upon which the order complained of in the above entitled matter was entered.

In witness whereof I have hereunto set my hand and caused to be affixed the seal of the Securities and Exchange Commission at its office in the City of Washington, District of Columbia, this 20th day of October, 1941.

(Seal) FRANCIS P. BRASSOR
Secretary

Original

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.
Public Utility Holding Company Act of 1935

Application of
PACIFIC GAS AND ELECTRIC COMPANY

For Exemption of Itself and Its Subsidiaries

Securities and Exchange Commission
Washington, D. C.

Public Utility Holding Company Act of 1935

APPLICATION OF
PACIFIC GAS AND ELECTRIC COMPANY AND GREAT WESTERN POWER COMPANY OF CALIFORNIA (A SUBSIDIARY OF PACIFIC GAS AND ELECTRIC COMPANY)

(A) For An Order, Under Section 3(a), Subdivisions (1) and (2), of the Public Utility Holding Company Act of 1935, Exempting Them and All of Their Subsidiaries From the Provisions of Said Act, and

(B) For An Order, Under Section 2(a), Subdivision (8), of Said Act Declaring That Neither Said Pacific Gas and Electric Company Nor Any of Its Subsidiary Companies Is a Subsidiary of the North American Company.

PRELIMINARY STATEMENT

The applicants herein, Pacific Gas and Electric Company and Great Western Power Company of California, respectfully submit the following preliminary statement:

A.

Pacific Gas and Electric Company is a corporation duly organized and existing under the laws of the State of California, and has its office and principal place of business in the City and County of San Francisco, in said state.

Pacific Gas and Electric Company is a public utility company which owns and operates facilities used for the generation, transmission and distribution of electric energy for sale at wholesale and retail, and also facilities used for the generation of gas, and for the transmission and distribution of both natural and manufactured gas for sale at retail for light and heat.

Pacific Gas and Electric Company owns and controls all voting securities (i. e., all issued shares of stock) of

Mt. Shasta Power Corporation,
Sierra and San Francisco Power Company,
Modesto Gas Company, and
Midland Counties Public Service Corporation;

more than ninety-nine per cent of the voting securities (i. e., issued shares of stock) of

Great Western Power Company of California; and

and more than eighty-nine per cent of all voting securities (i. e., issued shares of stock) of

San Joaquin Light and Power Corporation.

B.

Great Western Power Company of California is a corporation organized and existing under and by virtue of the laws of the State of California, and has its office and principal place of business in said City and County of San Francisco.

Great Western Power Company of California is a public utility company which owns and operates facilities used for the generation, transmission and distribution of electric energy for sale at wholesale and retail.

Great Western Power Company of California owns and controls all voting securities (i. e., all issued shares of stock) of

Napa Valley Electric Company,
Feather River Power Company, and
Great Western Power Company; and

two-thirds of all voting securities (i. e., issued shares of stock) of

California Electric Generating Company.

C.

Each of the companies hereinbefore mentioned is a corporation organized and existing under the laws of the State of California and is a public utility company owning or operating facilities used for the generation, transmission or distribution of electric energy or natural or manufactured gas for sale to the public. Applicants have no other public utility subsidiary company.

D.

All of the utility assets owned or operated by the aforesaid companies, for the generation, transmission, distribution and sale of electric energy, are physically interconnected and may be, and in fact are, economically operated as a single interconnected and coordinated system confined in its operations to a single area in the State of California, and constitute an integrated public utility system. Said system is not so large as to impair the advantages of localized management, efficient operation and the effectiveness of regulation by and under authority of the laws of the State of California.

All of the utility assets owned or operated by all of the aforesaid companies, for the generation, transmission, distribution and sale of natural and

manufactured gas, are so located and related that substantial economies may be, and in fact are, effectuated by being operated as a single coordinated system confined in its operations to a single area or region in the State of California, not so large as to impair the advantages of localized management, efficient operation and the effectiveness of regulation by and under authority of the laws of the State of California, and constitute an integrated public utility system. By far the greater part of the gas distributed and sold by said companies is natural gas obtained from a common source in the State of California and transmitted by main pipe lines to the principal centers of distribution in said state.

E.

Said Pacific Gas and Electric Company and said Great Western Power Company of California and every subsidiary company of each of them which is a public utility company are completely intrastate in character and carry on and conduct public utility business exclusively in the State of California, in which all of said companies are incorporated.

Said Pacific Gas and Electric Company is predominantly a public utility company, and its public utility operations do not extend beyond the State of California.

Great Western Power Company of California is also predominantly a public utility company and

its public utility operations do not extend beyond the State of California.

F.

Said Pacific Gas and Electric Company is not a subsidiary company of any holding company within the meaning of that term as defined in said Act. None of the other companies hereinbefore mentioned is a subsidiary company of any holding company except Pacific Gas and Electric Company or said Great Western Power Company of California.

No person or company, except as hereinbefore stated, directly or indirectly, owns or controls or holds with power to vote as much as five per cent of the outstanding voting securities (i.e., issued shares of stock) of any of the companies hereinbefore mentioned except Pacific Gas and Electric Company; and, except as hereinafter stated, no person or company, directly or indirectly, owns or controls or holds with power to vote as much as five per cent of the outstanding voting securities (i.e., issued shares of stock) of said Pacific Gas and Electric Company.

Approximately nine and seventy-six one-hundredths (9-76/100) per cent of the voting securities of said Pacific Gas and Electric Company are owned by Western Power Corporation, and approximately eight and thirty-one one-hundredths (8-31/100) per cent of the voting securities of said Pacific Gas and Electric Company are owned of

record or beneficially by The North American Company. Applicants are advised that Western Power Corporation is a subsidiary of The North American Company, both of which have their offices at 60 Broadway in the City of New York, State of New York.

Said Pacific Gas and Electric Company is not controlled, directly or indirectly, by said Western Power Corporation and said The North American Company, or either of them (either alone or pursuant to any arrangement or understanding with any other person or persons), either through any intermediary person or persons or by any means or device whatsoever. Said Pacific Gas and Electric Company is not an intermediary company through which control of any other company is exercised by either said Western Power Corporation or said The North American Company. Neither the management nor the policies of said Pacific Gas and Electric Company are subject to a controlling influence, directly or indirectly, by said Western Power Corporation and said The North American Company, or by either of them, either alone or pursuant to any arrangement or understanding with any other person or persons.

G.

The applicants herein, in making this application, respectfully reserve, and refuse to waive, any constitutional or legal right, and protest that said Public Utility Holding Company Act of 1935 is

repugnant to the Constitution of the United States, and that they are not subject to any of the provisions of said Act, or to any rule or regulation adopted by the Securities and Exchange Commission under its authority.

Without prejudice to any of their rights under the Constitution and laws of the United States, applicants now present the following statement and request for orders.

A. STATEMENT OF FACTS IN SUPPORT OF REQUEST FOR ORDER UNDER SECTION 3 (A), SUBDIVISIONS (1) AND (2).

1. Exact name of applicants.

   Pacific Gas and Electric Company
   Great Western Power Company of California.

2. State of organization of applicants.

   California.

3. Address of principal executive offices of applicants.

   245 Market Street, San Francisco, California.

4. Names of all subsidiaries of the applicants which are public utility or holding companies (as defined in the Public Utility Holding Company Act of 1935).

   The names of all subsidiaries of Pacific Gas and Electric Company which are public utility or holding companies (as defined in said

Act) and the percentage of the outstanding voting securities (i.e., outstanding shares of stock) in such subsidiaries owned by Pacific Gas and Electric Company is shown below:

Names of Subsidiaries	Percentage of Voting Power
*Mt. Shasta Power Corporation	100%
*Sierra and San Francisco Power Company	100%
*Modesto Gas Company	100%
(a) *Great Western Power Company of California	99.5%
*California Electric Generating Company	66.7%
*Napa Valley Electric Company	100%
*Feather River Power Company	100%
*Great Western Power Company	100%
San Joaquin Light and Power Corporation	89.3%
Midland Counties Public Service Corporation	100%

Pacific Gas and Electric Company also owns 45.8% of the outstanding capital stock of Vallejo Electric Light and Power Company, which is a public utility engaged in the business of distributing and selling electricity in the City of Vallejo, California. The balance of the stock of said company is owned by persons other than Pacific Gas and Electric Company or its subsidiaries. Two members of the present board of directors of said Val-

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*Proceedings have been commenced for the winding up and voluntary dissolution of these corporations. Upon obtaining approval of the California Railroad Commission, the assets of these corporations will be transferred to Pacific Gas and Electric Company and the latter will assume and agree to perform all of said corporations' liabilities and obligations.

(a) The subsidiaries of Great Western Power Company of California (except Western Canal Company, which distributes water only and is not listed above) are indented to the right under the name of said company above.

lejo Company, which consists of five members, were nominated by Pacific Gas and Electric Company, and the other three directors were nominated by the other stockholders. Pacific Gas and Electric Company disclaims the actual existence of effective control of said Vallejo Company.

All of the subsidiary companies named above are California corporations and their principal executive offices are located at 245 Market Street, San Francisco, California.

5. The location and nature of the business of the applicants and their subsidiary companies.

Pacific Gas and Electric Company is predominantly a public utility company engaged in the production, purchase, transmission, distribution and sale of electricity and gas in northern and central California. It also is engaged in distributing and selling water in a number of small cities and towns and in certain rural areas, produces and sells steam in certain parts of the Cities of San Francisco and Oakland, operates a street railway and bus system in the City of Sacramento, and as an incident to its gas and electric business, sells small quantities of certain gas and electric appliances.

Great Western Power Company of California is engaged in the production, transmission, distribution and sale of electricity throughout a large territory in northern and central California. It is also engaged in the business of selling steam in certain parts of San Francisco and Oakland.

Napa Valley Electric Company is engaged in the business of distributing and selling electric energy in the City of St. Helena, California, and vicinity thereof.

Feather River Power Company is engaged in the production of electricity, which it sells to Great Western Power Company of California.

California Electric Generating Company owns a steam electric generating plant in Oakland which it leases to Great Western Power Company of California.

Great Western Power Company owns a transmission line extending from Caribou Power House to Big Bend Power House on the Feather River, which transmission line is operated by Great Western Power Company of California.

Sierra and San Francisco Power Company owns certain hydro-electric and steam-electric generating plants, electric transmission and distribution lines and a water distribution system, which properties are leased to and operated by Pacific Gas and Electric Company.

San Joaquin Light and Power Corporation is engaged in the production, purchase, transmission, distribution and sale of electricity throughout a large territory in central California. It is also engaged in the purchase, transmission, distribution and sale of natural gas in several cities in central California, and distributes and sells water in the City of Selma.

Midland Counties Public Service Corporation is engaged in the business of distributing and selling electricity in the southerly part of Monterey County, San Luis Obispo County and Santa Barbara County north of the Coast Range Mountains. It purchases the power distributed by it from San Joaquin Light and Power Corporation.

Modesto Gas Company is engaged in the business of distributing and selling gas in the City of Modesto, California.

Mt. Shasta Power Corporation is engaged in the production, transmission, distribution and sale of electricity in northern California.

All of the public utility business of the applicants and their subsidiaries named above is conducted in the State of California and all of their public utility assets are located in said State.

6. Brief description of the properties of Pacific Gas and Electric Company and its subsidiaries, including Great Western Power Company of California.

(a) Electric—Pacific Gas and Electric Company and its subsidiaries own and operate forty-seven hydro-electric generating plants (not including the two Hat Creek plants mentioned below) having a total installed rated capacity of 1,141,815 horsepower, and in connection therewith storage and regulating reservoirs, tunnels, conduits, transmission lines, and other appurtenant works. The location of the hydro-electric projects and the rated installed capacities of the power plants are shown in the following table.

Mt. Shasta Power Corporation operates two hydro-electric power plants located on Hat Creek, in Shasta County, California, having an installed capacity of 33,512 horsepower, under a lease from The Red River Lumber Company.

Pacific Gas and Electric Company and its subsidiaries own eleven steam-electric generating plants having a total installed rated capacity of 502,412 horsepower. The location, the capacities, and the owners of such steam electric generating plants are shown in the following table:

STEAM-ELECTRIC PLANTS OF PACIFIC GAS AND ELECTRIC COMPANY AND SUBSIDIARIES

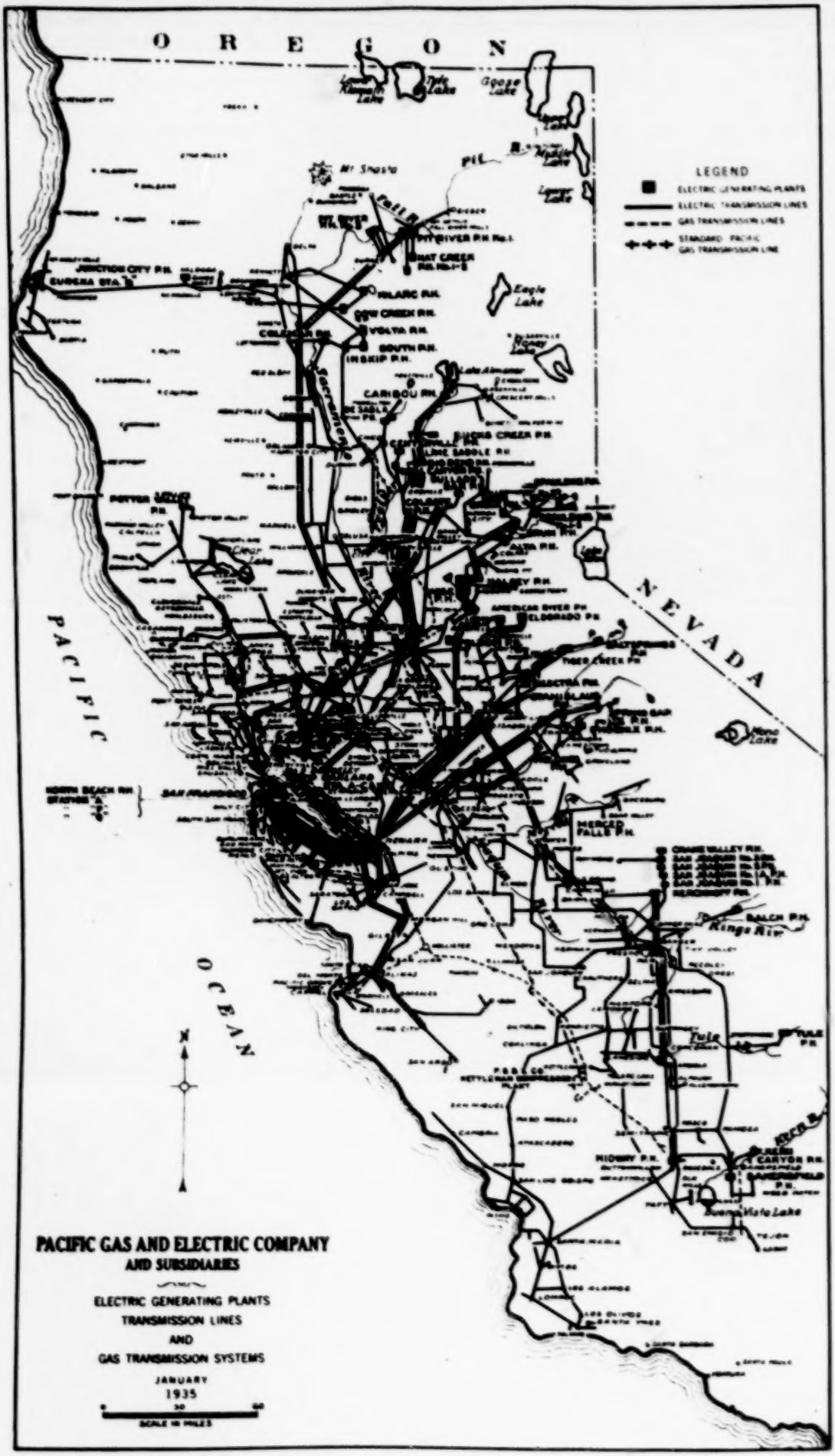
Name	No. of Plants	Total Horsepower	Location	Owner
1. Eureka	1	12,064	Eureka	P. G. & E. Co.
2. Station "A"	1	174,263	San Francisco	do.
3. Station "B"	1	23,458	Sacramento	do.
4. Station "C"	1	83,110	Oakland	do.
Total	4	292,895		
5. Station "P"	1	61,997	San Francisco	Great Western Power Co. of Calif.
6. Station "Q"	1	21,448	San Francisco	do.
7. Station "R"	1	6,702	San Francisco	do.
8. Station "W"	1	14,075	Oakland	California Electric Generating Co. (Subsidiary of Great Western Power Co. of California)
Total	4	104,222		
9. North Beach	1	36,193	San Francisco	Sierra & San Francisco Power Co.
10. Bakersfield	1	35,590	Bakersfield	San Joaquin Light and Power Corp.
11. Midway	1	33,512	Buttonwillow	do.
Total	2	69,102		
TOTAL CONSOLIDATED SYSTEM	11	502,412		

The electric generating plants of Pacific Gas and Electric Company and its subsidiaries form a part of an interconnected system. Pacific Gas and Electric Company and its subsidiaries own and operate 6122.2 miles of high voltage (60 KV or more) transmission lines.

Pacific Gas and Electric Company and its subsidiaries own and operate an electric distribution system extending into forty-six counties of northern and central California. Electric service is distributed in 134 incorporated cities and towns, 435 unincorporated communities and an extensive rural area in Northern and Central California. Pacific Gas and Electric Company and its subsidiaries own and operate approximately 29,305 miles of distribution lines, and the total number of electric consumers served on December 31, 1934, was 759,887. The extent of the territory served by Pacific Gas and Electric Company and its subsidiaries is shown on the map immediately following this page.

(b) Gas—Pacific Gas and Electric Company and its subsidiaries, San Joaquin Light and Power Corporation and Modesto Gas Company, own and operate an extensive gas transmission and distribution system in northern and central California. (See map) Ninety-seven per cent of the gas consumers are served with natural gas which Pacific Gas and Electric Company and said subsidiaries purchase, with minor exceptions, in the Buttonwillow gas field and the Kettleman Hills and Semi-Tropic oil and gas fields, which are located in California

approximately 200 miles south of San Francisco. At Kettleman Hills, Pacific Gas and Electric Company owns and operates a large compressor station from which the gas is transported to the various distribution systems through two large transmission pipe lines, one of which is owned by it and the other by Standard Pacific Gas Line, Incorporated. Pacific Gas and Electric Company owns fifty per cent of the outstanding capital stock of Standard Pacific Gas Line, Incorporated, and the latter has agreed to set aside and reserve for the exclusive use of Pacific Gas and Electric Company one-half of the carrying capacity of its gas line.


O R E G O N
NEVADA
PACIFIC OCEAN
LEGEND
ELECTRIC GENERATING PLANTS
ELECTRIC TRANSMISSION LINES
GAS TRANSMISSION LINES
STANDARD PACIFIC GAS TRANSMISSION LINE
PACIFIC GAS AND ELECTRIC COMPANY
AND SUBSIDIARIES
ELECTRIC GENERATING PLANTS
TRANSMISSION LINES
AND
GAS TRANSMISSION SYSTEMS
JANUARY
1935
SCALE IN MILES

Pacific Gas and Electric Company owns fourteen gas generating plants, one of which is leased to its subsidiary, San Joaquin Light and Power Corporation. Seven of these plants, having a total 20-hour daily capacity of 7,012,000 cubic feet of gas, are situated in Marysville, Eureka, Willows, Grass Valley, Red Bluff, Redding and Colusa, which are not connected with the natural gas transmission lines and manufacture gas. The remaining seven gas generating plants are located in San Francisco, Oakland, Sacramento, San Rafael, Stockton, Vallejo, and Fresno, which are now supplied with natural gas. Modesto Gas Company also owns a gas generating plant located in the City of Modesto, California. Since the introduction of natural gas, the seven plants last above mentioned of Pacific Gas and Electric Company and the plant of Modesto Gas Company have been adjusted and equipped to furnish gas manufactured from Diesel oil, and have a total 24-hour daily capacity of approximately 145,000,000 cubic feet of gas. Gas so manufactured has a high heat content and may be mixed with or substituted for natural gas as occasion may require. These plants are used as stand-by against interruption of natural gas service and to meet demands in excess of the capacity of the gas transmission lines.

Pacific Gas and Electric Company and said two subsidiaries distribute gas in ninety-two incorporated cities and towns, and sixty-three unincor-

porated communities in northern and central California.

In the following table are set forth the number of miles of gas transmission and distribution lines of Pacific Gas and Electric Company and its subsidiaries, and the number of communities and number of gas consumers served on December 31, 1934.

	P. G. & E. Co.	Modesto Gas Company	San Joaquin Light & Power Corp.	Total
Miles Transmission Line	563.0	....	70.2	633.2
Miles Distribution Line	6,487.4	68.6	252.4	6,808.4
Incorporated Cities and Towns Served	86	1	5	92
Unincorporated Communities Served	60	....	3	63
No. of Gas Consumers	512,371	4,693	14,022	531,086

(c) Other Properties—Pacific Gas and Electric Company owns and operates an electric street railway and bus system in the City of Sacramento, steam heating systems in a portion of the Cities of San Francisco and Oakland, and water distribution systems in fourteen cities and small towns, among which are the Cities of King City, Salinas, Vacaville, Sonora and Auburn, and a water system for irrigation and mining purposes in Placer County, and to a limited extent in certain isolated areas. San Joaquin Light and Power Corporation owns a water distribution system in the City of Selma. Great Western Power Company of California owns a steam heating system in a portion of the Cities of San Francisco and Oakland.

All of the public utility properties of Pacific Gas and Electric Company and its subsidiaries above described are located in California. Pacific Gas and Electric Company and its subsidiaries do not purchase or sell any gas or electricity outside of California or at the state line.

Pacific Gas and Electric Company owns and operates a transmission (60-KV) line extending from its Spaulding Power House to Summit, which is located in California about twenty miles from the California-Nevada state line. Said transmission line connects at Summit with a transmission line owned and operated by Sierra Pacific Power Company, which is a public utility company distributing electricity in both California and Nevada. Pacific Gas and Electric Company sells and delivers electric power to said Sierra Pacific Power Company at Summit under a contract, dated March 23, 1923. Said contract, which was approved by the Railroad Commission of California, provides for the sale at wholesale and delivery at Summit to Sierra Pacific Power Company of a maximum of 5000 kilowatts of electric energy. The number of kilowatt hours sold to Sierra Pacific Power Company for the years 1932, 1933 and 1934 and the first six months of 1935 is shown under item 7(d) below.

Pacific Gas and Electric Company also owns two transmission lines (one line being 60-KV and the other 110-KV) which connect near Delta (which is located in California about seventy miles below the Oregon-California State line) with the transmis-

sion lines of The California Oregon Power Company, a public utility company which generates and sells electric energy in both California and Oregon. Pacific Gas and Electric Company purchases electric energy at wholesale from The California Oregon Power Company at Delta. The contracts under which said sale and delivery of power are made were entered into with the approval of the California Railroad Commission, and provide for the sale of a maximum of 44,600 kilowatts of electric energy. The number of kilowatt hours purchased from The California Oregon Power Company for the years 1932, 1933 and 1934 and the first six months of 1935 is shown under item 7(e) below.

The gas which is distributed and sold by Pacific Gas and Electric Company and its subsidiaries is all produced in California. Natural gas, constituting approximately 99 per cent of the gas distributed, is purchased from producing companies operating, with minor exceptions, in the Kettleman Hills and Semi-Tropic oil and gas fields and the Buttonwillow gas field. The Kettleman Hills field is located in Fresno and Kings Counties, and the Buttonwillow and Semi-Tropic fields are located in Kern County, California. The artificial gas used by Pacific Gas and Electric Company and its subsidiaries is all manufactured in California. No gas is sold by Pacific Gas and Electric Company or its subsidiaries outside of California, nor is any gas sold to any other company distributing gas outside of California.

7. Data showing the kilowatt hours (kwh) of electricity, the thousands of cubic feet (M-CF) of natural and manufactured gas, and the approximate BTU content of said gas, sold by applicants and each of their subsidiaries for the years 1932, 1933 and 1934 and the first six months of 1935.

(a) Sales by Applicants and Each of their Subsidiaries Direct to Retail Consumers

Name of Company	Kwh. Electricity Sold 1932	1933	1934	Six Months 1935
P. G. & E. Co.	1,575,899,141	1,579,202,032	1,709,353,991	817,419,032
Sierra & S. F. Power Co.	198,204,878	194,010,697	202,754,739	87,837,172
G. W. P. Co. of Calif.	472,919,169	455,531,223	497,176,274	249,136,099
Napa Valley Elec. Co.	2,836,248	2,830,785	3,224,137	1,557,868
Mt. Shasta Power Corp.	1,323,295	1,484,423	1,516,664	436,998
S. J. L. & P. Co.	453,776,730	483,457,493	603,633,392	206,071,695
M. C. P. S. Co.	75,666,455	66,394,174	74,404,295	32,721,114
Total Sold to Consumers	2,780,625,916	2,782,910,827	3,092,063,492	1,395,179,978
	M.-C.F. Gas Sold			
P. G. & E. Co.—Mfg.	479,487.9	458,030.7	452,055.3	275,192.8
—Natural	30,846,701.1	35,887,339.2	36,617,027.6	20,608,145.9
Modesto Gas Co.—Nat.	462,421.2	473,560.3	577,152.0	336,993.7
S. J. L. & P. Co.—Nat.	2,501,810.1	2,687,125.7	3,182,309.1	2,098,087.1
Total Sold to Consumers	34,290,420.3	39,506,055.9	40,828,544.0	23,318,419.5

Note: B.t.u. Heat Content: Natural Gas 1150 to 1180 B.t.u. per cubic foot; Diesel Oil Gas approximately equivalent to natural gas; other Manufactured Gas 540 B.t.u. per cubic foot.

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(b) Sales by Applicants and Each of their Subsidiaries Wholesale to Other Companies and Municipalities for Resale

	Kwh. Electricity Sold			
P. G. & E. Co.	110,264,982	121,862,232	124,669,230	57,051,002
Sierra & S. F. Power Co.	4,023,192	2,304,200	2,410,380	827,760
G. W. P. Co. of Calif.	26,547,469	22,627,115	24,380,360	12,711,320
Napa Valley Elec. Co.	———	———	———	———
Mt. Shasta Power Corp.	———	———	———	———
S. J. L. & P. Co.	9,152,325	9,493,276	24,157,536	4,558,675
M. C. P. S. Co.	1,389,600	1,407,600	1,434,530	729,500
Total Sold to Other Companies & Municipalities for Resale	151,377,568	157,694,423	177,052,036	75,878,257
	M.-C.F. Natural Gas Sold (1150 to 1180 B.t.u.)			
P. G. & E. Co.	303,881.6	296,801.1	246,138.8	156,938.1
Modesto Gas Co.	———	———	———	———
S. J. L. & P. Co.	———	———	———	———
Total Sold to Other Companies for Resale	303,881.6	296,801.1	246,138.8	156,938.1

(c) Total Sales by Applicants and Each of their Subsidiaries (Sum of (a) and (b) Above)

	Kwh. Electricity Sold			
P. G. & E. Co.	1,686,164,123	1,701,064,264	1,834,023,221	874,470,034
Sierra & S. F. Power Co.	202,228,070	196,314,897	205,165,119	88,664,932
G. W. P. Co. of Calif.	499,466,638	478,158,338	521,556,634	261,847,419
Napa Valley Elec. Co.	2,836,248	2,830,785	3,224,137	1,557,868
Mt. Shasta Power Corp.	1,323,295	1,484,423	1,516,664	436,998
S. J. L. & P. Co.	462,929,055	492,950,769	627,790,928	210,630,370
M. C. P. S. Co.	77,056,055	67,801,774	75,838,825	33,450,614
Cons. System Sales	2,932,003,484	2,940,605,250	3,269,115,528	1,471,058,235

	M.-C.F. Gas Sold			
P. G. & E. Co.—Mfd. Gas	479,487.9	458,030.7	452,055.3	275,192.8
—Natural	31,150,582.7	36,184,140.3	36,863,166.4	20,765,084.0
Modesto Gas Co.—Nat.	462,421.2	473,560.3	577,152.0	336,993.7
S. J. L. & P. Co.—Nat.	2,501,810.1	2,687,125.7	3,182,309.1	2,098,087.1
Cons. System Sales	34,594,301.9	39,802,857.0	41,074,682.8	23,475,357.6

(d) Sales to Sierra Pacific Power Company at Summit, California (which are included in (b) above)

Kwh. Sold			
1932	1933	1934	First Six Months 1935
12,366,000	25,180,762	17,586,700	12,840,930

(e) Kilowatt-Hours Purchased by Pacific Gas and Electric Company and its Subsidiary, Mt. Shasta Power Corporation, from The California Oregon Power Company at Delta, California.

Kwh. Purchased			
1932	1933	1934	Six Months First 1935
252,994,900	261,038,200	259,023,700	128,690,800

Neither of the applicants nor any of their subsidiaries distributes or sells gas or electricity outside of the State of California, or at the border of the State. Neither of the applicants nor any of their subsidiaries owns or operates any electric transmission or gas pipe lines which deliver or receive electricity or gas at the border of the State of California. Neither of the applicants nor any of their subsidiaries purchases gas or electricity outside of the State of California or at the border of the State.

8. Financial Statements are attached.

The consolidated profit and loss statements of Pacific Gas and Electric Company and its subsidiaries and the profit and loss statements of Pacific Gas and Electric Company and each of its subsidiaries for the years 1932, 1933 and 1934 and the first six months of 1935 are attached hereto.

9. Statement of reasons why applicants and their subsidiaries are entitled, under Section 3(a), subdivisions (1) and (2), to exemption from the provisions of the Public Utility Holding Company Act of 1935.

Applicants and their subsidiaries are entitled, under Section 3(a), subdivisions (1) and (2), to exemption from the provisions of the Public Utility Holding Company Act of 1935, because, as appears from the facts stated above,

(A) applicants, and every subsidiary company thereof which is a public-utility company are "predominantly intrastate in character" and carry on all their public utility business within the State of California in which they are organized (Section 3(a), subdivision (1) of said Act), and

(B) each of the applicants "is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized" (Section 3(a), subdivision (2) of said Act).

B. STATEMENT OF FACTS IN SUPPORT OF REQUEST FOR AN ORDER UNDER SECTION 2(a), SUBDIVISION (8).

(a) Name and address of applicant and of specified holding company.

(1) Applicant.

Pacific Gas and Electric Company,
245 Market Street, San Francisco, California.

(2) Specified holding company.

The North American Company,
60 Broadway, New York City, N. Y.

(b) Names and addresses of all persons owning of record, or, if known, directly or indirectly controlling or holding with power to vote, more than three per cent of any class of voting securities or more than ten per cent of any other class of securities of applicant, giving, as to each class of securities involved, the amount outstanding and the amount so owned or controlled or held by each such person.

Applicant has only three classes of securities outstanding, viz., common stock, preferred stock and bonds. Holders of common stock and holders of preferred stock have full and equal voting rights. Each stockholder of record is entitled to one vote for each share held, and at any election for directors is entitled to cumulate his votes. The total number of shares of common stock now issued and outstanding is 6,261,357, and the total number of shares of pre-

ferred stock now issued and outstanding is 5,234,466. Holders of bonds have no voting rights.

The names and addresses of all persons owning of record, or, if known, directly or indirectly controlling or holding with power to vote, more than three per cent of any class of voting securities (i.e., issued shares of capital stock) are as follows:

Owner of Record	Beneficial Owner	Class of Security	Number of Shares owned
*Western Power Corporation 60 Broadway New York City, N. Y.	Same	Common Stock	1,122,060
The North American Company 60 Broadway New York City, N. Y.	Same	" "	886,670
	The North American Company 60 Broadway New York City, N. Y.	" "	68,326
Standard Gas and Electric Company 231 So. LaSalle St. Chicago, Illinois	Same	Common Stock	200,420

*Applicant is advised that Western Power Corporation is a subsidiary of The North American Company.

The percentages of the total voting power represented by the common stock owned by Western Power Corporation and by The North American Company, as beneficial owner and owner of record, are 9.76 and 8.31 per cent, respectively.

The percentage of the total voting power represented by the common stock owned by Standard Gas and Electric Company is 1.79 per cent.

So far as known to applicant, no person owns more than 10 per cent of applicant's outstanding bonds. $84,384,000 face value of applicant's General and Refunding Mortgage Bonds, due 1942, are pledged with American Trust Company, San Francisco, "California Trustee" under applicant's First and Refunding Mortgage. Said General and Refunding Mortgage Bonds are held by said American Trust Company as additional security for applicant's First and Refunding Mortgage Bonds issued pursuant to said First and Refunding Mortgage.

(c) Names of officers and directors of applicant and the names of such officers and directors who are officers, directors, nominees or appointees of any holding or public-utility company.

Following is a list of the directors and principal executive officers of applicant.

Name	Office held
Allen L. Chickering	Director
W. H. Crocker	"
F. W. Doolittle	"
F. T. Elsey	Director
Norman B. Livermore	"
John D. McKee	"
C. O. G. Miller	"
John J. O'Brien	"
James B. Black	President and Director
P. M. Downing	First Vice-President, General Manager and Director
John P. Coghlan	Second Vice-President and Assistant to the President and Director
D. H. Foote	Third Vice-President and Secretary-Treasurer and Director
A. E. Wishon	Vice-President and Assistant General Manager
A. H. Markwart	Vice-President in Charge of Engineering
W. G. Vincent	Vice-President and Executive Engineer
R. E. Fisher	Vice-President in Charge of Public Relations and Sales
E. W. Hodges	Comptroller

The only officers or directors of applicant above named who are officers, directors, nominees or appointees of any holding or public utility company (as defined in the Public Utility Holding Company Act of 1935), other than applicant and its subsidiaries, are the following:

(1) Mr. Chickering, who is a vice-president and a director of San Diego Consolidated Gas and Electric Company.

(2) Mr. Miller, who is president and a director of Pacific Lighting Corporation and also a director of the latter company's subsidiaries, Southern California Gas Company and Southern Counties Gas Company of California.

(3) Mr. Doolittle, who is a vice-president and a director of The North American Company and also is an officer of other companies.

(4) Mr. O'Brien, who is president and a director of H. M. Byllesby and Company and Standard Gas and Electric Company and also is an officer of numerous other companies.

Mr. James B. Black was elected president of applicant on November 20, 1935. Prior thereto and while he was a director of applicant, Mr. Black was a vice-president of The North American Company, a vice-president and a director of Western Power Corporation, and a director of North American Utility Securities Corporation. On November 20, 1935 and prior to his election as president of applicant, Mr. Black tendered his resignation as vice-president of The North American Company, vice-president and director of Western Power Corporation, and director of North American Utility Securities Corporation, and severed all connection and relationship with said companies and their subsidiaries.

The board of directors of applicant, as provided by its articles of incorporation, consists of fifteen members. At the present time, there are three vacancies on the board resulting from the recent death of three members, namely, Mr. A. F. Hockenbeamer (the late president of applicant), Mr. F. B. Anderson and Mr. Guy C. Earl.

(d) A list and a brief statement of the nature of any contracts, agreements, or other arrangements, presently in force or in force at any time since December 31, 1933, providing for the furnishing of any management, supervision, or substantial services of a similar nature, to applicant by any company.

There are no such contracts, agreements or other arrangements.

(e) The amount, interest rate, and name of lender, with respect to any loans or advances made to applicant by any company, as presently outstanding and as outstanding at each of the last three annual balance-sheet dates, excluding unsecured bank loans made in the ordinary course of business and not covered by (f) or (g) below.

There are no such loans or advances.

(f) A brief description of any factors relevant to the question whether or not applicant directly or indirectly exercises control or a controlling influence over any other public-utility company.

Applicant exercises control over its subsidiary public-utility companies named in answer to item 4 of part A of this application. Applicant does not, directly or indirectly, exercise control or a controlling influence over any other public-utility company.

(g) Brief statement of any factors relevant to the question whether or not control or a controlling influence, as described in clauses (i), (ii) or (iii) of Section 2(a)(8), is exercised directly or indirectly by any other company (including companies more than one degree removed from applicant) with respect to applicant or with respect to any other company through applicant.

(1) Since its incorporation on October 10, 1905, applicant has been and is now an independent California public-utility company. Applicant is managed and its policies are determined, exclusively, by its board of directors and officers.

(2) The North American Company has never exercised or attempted to exercise, either directly or indirectly, control or a controlling influence over the management or policies of applicant or any of its subsidiaries.

(3) The North American Company does not receive, either directly or indirectly through any of its subsidiaries, any money or other valuable consideration from applicant or any of the latter's subsidiaries, except the regularly declared dividends upon the common stock of applicant owned by The North American Company and its subsidiaries.

(h) Statement of reasons why applicant is entitled to an order, under Section 2(a), subdivision (8) of said Act, declaring that neither applicant nor any of its subsidiaries is a subsidiary of The North American Company.

Applicant is entitled to an order under said Section 2(a), subdivision (8), declaring that neither applicant nor any of its subsidiaries is a subsidiary of The North American Company because, as appears from the facts stated above,

(i) applicant is not controlled, directly or indirectly, by The North American Company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever,

(ii) applicant is not an intermediary company through which such control of another company is exercised, and

(iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by The North American Com-

pany (either alone or pursuant to an arrangement or understanding with one or more other persons).

Wherefore, Pacific Gas and Electric Company and Great Western Power Company of California (a subsidiary of Pacific Gas and Electric Company), pray

(A) for an order, under Section 3(a), subdivisions (1) and (2), of the Public Utility Holding Company Act of 1935, exempting them and all of their subsidiaries from the provisions of said Act, and

(B) for an order, under Section 2(a), subdivision (8), of said Act declaring that neither said Pacific Gas and Electric Company nor any of its subsidiary companies is a subsidiary of The North American Company.

Dated: San Francisco, California, November 26, 1935.

PACIFIC GAS AND ELECTRIC COMPANY
By JAMES B. BLACK
President

Attest: D. H. FOOTE
Secretary

GREAT WESTERN POWER COMPANY OF CALIFORNIA
By JAMES B. BLACK
President

Attest: D. H. FOOTE
Secretary

Securities and Exchange Commission

Washington, D. C.

Public Utility Holding Company Act of 1935

AMENDED AND SUPPLEMENTAL APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY (a California Corporation)

(A) For an Order, Under Section 3(A), Subdivisions (1) and (2), of the Public Utility Holding Company Act of 1935, Exempting It and All of Its Subsidiaries From the Provisions of Said Act, and

(B) For an Order, Under Section 2(A), Subdivision (8), of Said Act Declaring That Neither Said Pacific Gas and Electric Company nor Any of Its Subsidiary Companies Is a Subsidiary of The North American Company.

Docket Number 31-55

PRELIMINARY STATEMENT

I.

Pacific Gas and Electric Company, the applicant herein, is a corporation duly organized and existing under the laws of the State of California, has its office and principal place of business at 245 Market Street in the City and County of San Francisco in said State, and is a public utility company which owns and operates facilities which are situate in

California and are used for the generation, transmission and distribution of electric energy for sale at wholesale and retail, and other facilities which also are situate in California and are used for the generation of gas and for transmission and distribution of both natural and manufactured gas for sale at retail for light and heat. At the present time, Pacific Gas and Electric Company is also a holding company in respect to only one California public utility company and several other California corporations, none of which is a public utility company.

II.

The original application in this proceeding was filed with the Securities and Exchange Commission November 29, 1935, and was a joint application of said Pacific Gas and Electric Company and of Great Western Power Company of California. At that time, said Great Western Power Company of California was a subsidiary company of said Pacific Gas and Electric Company, and was also a holding company with respect to four other companies, as stated in said original application. At that time, the direct public utility subsidiaries of Pacific Gas and Electric Company were

Mt. Shasta Power Corporation
Sierra and San Francisco Power Company
Modesto Gas Company
Midland Counties Public Service Corporation
Great Western Power Company of California
San Joaquin Light and Power Corporation

Also at that time, the indirect public utility subsidiaries of Pacific Gas and Electric Company and direct public utility subsidiaries of Great Western Power Company of California were

Napa Valley Electric Company
Feather River Power Company
Great Western Power Company
California Electric Generating Company

All of the companies mentioned in this paragraph were corporations organized under the laws of the State of California and were public utility companies whose operations as such were confined to the State of California.

III.

On July 30, 1936, said Mt. Shasta Power Corporation, Sierra and San Francisco Power Company, Modesto Gas Company, Great Western Power Company of California, Napa Valley Electric Company, Feather River Power Company, Great Western Power Company and California Electric Generating Company, having previously wound up their affairs and distributed their operating properties and other assets to Pacific Gas and Electric Company, were finally dissolved. Midland Counties Public Service corporation, having previously wound up its affairs and distributed its operating properties and other assets to Pacific Gas and Electric Company, was finally dissolved on or about December 28, 1939. San Joaquin Light and Power Cor-

poration is now in process of winding up its affairs and has distributed to Pacific Gas and Electric Company all of its operating properties and other assets except a sum of money held in reserve for eventual distribution to certain minority common stockholders whose rights have not yet been judicially determined. Said San Joaquin Light and Power Corporation is no longer a public utility company and neither owns nor operates any gas or electric properties and conducts no public utility business. The distribution of assets of each of the aforesaid corporations was made under authority of an order of the Railroad Commission of the State of California.

IV.

When said original application was filed and at all times since then, the applicant herein has held and owned, and now holds and owns, approximately 45.8 per cent of the outstanding shares of capital stock of Vallejo Electric Light and Power Company, which is a corporation organized under the laws of the State of California and is engaged in the business of distributing and selling electric energy in the City of Vallejo and its vicinity, in the State of California. In the said original application, Pacific Gas and Electric Company disclaimed, and in this amended and supplemental application disclaims, the possession of effective control of said Vallejo Electric Light and Power Company.

V.

Applicant is not a holding company with respect to any public utility company other than said Vallejo Electric Light and Power Company. Applicant does not now possess, and never has possessed, effective control of said Vallejo Electric Light and Power Company.

VI.

All of the utility assets owned or operated by the applicant, for the generation, transmission, distribution and sale of electric energy, are physically interconnected and may be, and in fact are, economically operated as a single interconnected and coordinated system confined in its operations to a single area in the State of California, and constitute an integrated public utility system. Said system is not so large as to impair the advantages of localized management, efficient operation and the effectiveness of regulation by and under authority of the laws of the State of California.

VII.

All of the utility assets owned or operated by the applicant, for the generation, transmission, distribution and sale of natural and manufactured gas, are so located and related that substantial economies may be, and in fact are, effectuated by being operated as a single coordinated system which is confined in its operations to the central and northern part of the State of California, and which is

not so large as to impair the advantages of localized management, efficient operation and the effectiveness of regulation by and under authority of the laws of the State of California, and constitute an integrated public utility system. By far the greater part of the gas distributed and sold by said companies is natural gas the greater part of which is obtained from a common source in the State of California and is transmitted by main pipe lines to the principal centers of distribution in the central and northern part of said state. For additional information on this point see Part A, pages 6, 7 and 9 of this application.

VIII.

Applicant is intrastate in character and carries on and conducts its public utility business exclusively in the State of California, in which it and all of its subsidiary companies are incorporated. Applicant is now and ever since January 1, 1912, has been predominantly a public utility company, and its public utility operations do not now extend and never have extended beyond the State of California.

IX.

Approximately 17.71 per cent of Applicant's issued and outstanding shares of stock are now owned by The North American Company, a New Jersey corporation, as the owner of record or as the beneficial owner. But applicant is not controlled, directly or indirectly, by said The North American

Company (either alone or pursuant to an arrangement or understanding with one or more other persons), either through one or more intermediary persons or by any means or device whatsoever; applicant is not an intermediary company through which control of any other company is exercised by said The North American Company; and neither the management nor the policies of the applicant are subject to a controlling influence, directly or indirectly, by said The North American Company (either alone or pursuant to an arrangement or understanding with one or more other persons). It is neither necessary nor appropriate in the public interest or for the protection of investors or consumers that the applicant should be subject to the obligations, duties, and liabilities imposed by the Public Utility Holding Company Act of 1935, upon subsidiary companies of holding companies. Applicant is informed that said The North American Company is a registered holding company under the provisions of said Act. For further particulars reference is hereby made to Part B of this application.

X.

The Public Utilities Act of the State of California was enacted in December, 1911, and went into effect March 23, 1912. That act granted to the Railroad Commission of the State of California power and authority (a) to regulate and control the issue by public utilities of stocks, bonds, and other securities (b) to prescribe and regulate the

rates and charges of public utilities for services and commodities (c) to prescribe regulations governing the performance of service and the furnishing of commodities by public utilities (d) to prescribe and establish a uniform system of accounts for public utilities and (e) generally, to supervise and regulate every public utility in the State and to do all things necessary and convenient in the exercise of its power and jurisdiction. Under that Act as originally enacted, the Railroad Commission did not have authority to regulate rates and charges in municipalities which retained their former power to regulate rates. But in 1915, by an amendment of the Act which went into effect August 8, 1915, the Railroad Commission's power to regulate rates was made plenary throughout the State.

XI.

All shares of applicant's common stock now issued and outstanding, except 1,279,950 shares of the par value of $25 each, issued in lieu of 319,987½ shares of common stock of the par value of $100 each which were outstanding March 23, 1912, have been issued under authority of and in accordance with orders made by the Railroad Commission of the State of California. All of applicant's preferred stock now issued and outstanding, including 410,000 shares of the par value of $25 each issued in lieu of 100,000 shares of applicant's original preferred stock of the par value of $100 each which were outstanding March 23, 1912, have been issued

under authority of and in accordance with orders of said Railroad Commission. All bonds issued and assumed by applicant and now outstanding have been issued under and in accordance with orders of said Railroad Commission.

XII.

Said Railroad Commission, by order effective January 1, 1913, prescribed a uniform system of accounts for public utilities. Ever since January, 1913, applicant has kept its accounts in accordance with the system as originally prescribed and as amended from time to time by said Railroad Commission.

XIII.

Applicant has carefully considered the recitals contained in Section 1 of said Public Utility Holding Company Act of 1935, and is advised and believes and therefore avers that none of the abuses mentioned and referred to in said Section 1 have at any time arisen out of or existed by reason of applicant's relations with its present or any of its former subsidiaries, or by reason of said The North American Company's acquisition and ownership of shares of stock in the applicant to the extent and under the circumstances set forth in Part B of this application.

XIV.

The applicant herein, in making this application, respectfully reserves, and refuses to waive, any constitutional or legal right, and protests that said Public Utility Holding Company Act of 1935, if

and to the extent that its provisions may be applicable to applicant, is repugnant to the Constitution of the United States, and that applicant is not subject to any of the provisions of said Act, or to any rule or regulation adopted by the Securities and Exchange Commission under its authority.

Without prejudice to any of its rights under the Constitution and laws of the United States, applicant now presents the following statements and prayer for orders.

PART A. STATEMENT OF FACTS IN SUPPORT OF REQUEST FOR ORDER UNDER SECTION 3 (a), SUBDIVISIONS (1) AND (2)

1. Exact name of applicant.

Pacific Gas and Electric Company.

2. State of organization of applicant and of each of its subsidiaries.

California.

3. Address of principal executive offices of applicant and of each of its subsidiaries.

Applicant	245 Market Street, San Francisco, Calif.
Arlington Properties Company Ltd.	" " "
Crystal Lake Company Ltd.	" " "
San Joaquin Light and Power Corporation	" " "
Valley Electrical Supply Company	" " "
Western Canal Company	" " "
Standard Pacific Gas Line Inc.	225 Bush Street, San Francisco, Calif.
Vallejo Electric Light and Power Company	Vallejo, California.

4. Names of all of applicant's subsidiaries and of all other companies five per cent or more of whose issued shares are owned by the applicant.

The names of all of applicant's subsidiaries and of all other companies five per cent or more of whose issued shares of stock is owned by applicant, and the percentage of the outstanding voting securities (i. e., outstanding shares of stock) in such subsidiaries and other companies owned, directly or indirectly, by applicant are shown below:

Names of Subsidiaries and Other Companies	Percentage of Voting Power
Arlington Properties Company Ltd.	100%
Crystal Lake Company Ltd. (subsidiary of Arlington Properties Company Ltd.)	100%
San Joaquin Light and Power Corporation	99.8+%
Standard Pacific Gas Line Inc.	50%
Vallejo Electric Light and Power Company	45.8%
Valley Electrical Supply Company	95%
Western Canal Company	85%

None of the companies named in this Item 4, except Vallejo Electric Light and Power Company, is a public utility company within the meaning of that term as defined in Section 2 of the Public Utility Holding Company Act of 1935; and none of said companies, except Vallejo Electric Light and Power Company, either owns or operates any facilities used for the generation, transmission or distribution of electric energy for sale, or any facilities used for the distribution at retail of natural or manufactured gas for heat, light or power.

Vallejo Electric Light and Power Company is

a public utility engaged in the business of distributing and selling electric energy in the City of Vallejo in the State of California. Its board of directors consist of five members, two of whom were nominated by the applicant and the remaining three were nominated by other stockholders. The applicant disclaims possession of control of said Vallejo Electric Light and Power Company.

5. The location and nature of the business of the applicant and of the other companies listed in Item 4.

The applicant is predominantly a public utility company whose operations as such do not extend beyond the State of California, under whose laws it is incorporated. Applicant's principal business is the production, purchase, transmission, distribution, and sale of electric energy and natural and manufactured gas in the northern and central parts of the State of California. Applicant also distributes and sells water to the public in a number of small cities and towns and in some rural areas; produces, distributes and sells steam in parts of the Cities of San Francisco and Oakland, operates a street railway and bus system in the City of Sacramento; and, as an incident to its gas and electric business, sells some gas and electric appliances, all in the State of California and not elsewhere. The location of the properties and facilities used by the applicant in its public utility business will be more definitely shown in Item 6 of this statement. All of applicant's public utility business is conduct-

ed, and all of its public utility assets are located, in the State of California.

The location and nature of the business of Vallejo Electric Light and Power Company is sufficiently stated in Item 4 of this statement.

All of the properties and assets of the other companies named in Item 4 of this statement are located, and all of their business is conducted, in the State of California.

6. Brief description of the properties of applicant.

(a) Electric—Applicant owns and operates forty-seven hydro-electric generating plants (not including the two Hat Creek plants hereinafter mentioned) having a total installed rated capacity of 1,143,688 horsepower, and in connection therewith storage and regulating reservoirs, tunnels, conduits, transmission lines, and other appurtenant works. The location of these hydro-electric projects and the rated installed capacities of these power plants are shown in the following table.

HYDRO-ELECTRIC PROJECTS OF APPLICANT

	Name of Project	No. of Plants	Total Horsepower	Location
1.	American River	1	8,184	American River
2.	Battle Creek (Coleman, Inskip, South and Volta Plants)	4	44,906	Battle Creek
3.	Bullards Bar	1	10,891	No. Fork Yuba River
4.	Colgate	1	20,878	No. Fork Yuba River
5.	DeSabla-Centerville (DeSabla and Centerville Plants)	2	26,005	Butte Creek
6.	Eldorado	1	33,512	American River
7.	Electra	1	26,810	Mokelumne River
8.	Folsom	1	5,027	American River
9.	Junction City	1	2,882	Canyon Creek
10.	Kilarc-Cow Creek (Kilarc and Cow Creek Plants)	2	6,032	Cow Creek
11.	Oro (Coal Canyon and Lime Saddle Plants)	2	4,021	West Fork Feather River
12.	Potter Valley	1	10,054	Eel and Russian Rivers
13.	Salt Springs (Salt Springs and Tiger Creek Plants)	2	95,174	Mokelumne River
14.	South Yuba (Alta, Deer Creek, Drum, Halsey, Wise and Spaulding Nos. 1, 2			South Yuba and

	and 3 Plants)	3	144,828	Bear Rivers
15.	Big Bend	1	87,131	No. Fork Feather River
16.	Caribou	1	89,369	No. Fork Feather River
17.	Bucks Creek	1	67,024	No. Fork Feather River
18.	Pit River No. 1	1	93,834	Pit River
19.	Pit River No. 3	1	108,580	Pit River
20.	Melones	1	36,193	Stanislaus River
21.	Phoenix	1	2,681	Stanislaus River
22.	Spring Gap	1	10,054	Stanislaus River
23.	Stanislaus	1	45,576	Stanislaus River
24.	Balch	1	44,236	Kings River
25.	Crane Valley (Crane Valley, A. G. Wishon and San Joaquin Nos. 1, 1-A 2 and 3 Plants)	5	35,087	North Fork San Joaquin River
26.	Kerckhoff	1	57,105	San Joaquin River
27.	Kern River	1	14,209	Kern River
28.	Merced Falls	1	5,362	Merced River
29.	Tule River	1	8,043	Tule River
	TOTAL	47	1,143,688	

Applicant operates two hydro-electric power plants located on Hat Creek in Shasta County, California, having an installed capacity of 33,512 horsepower, under a lease from The Red River Lumber Company.

Applicant owns nine steam-electric generating plants having a total installed rated capacity of 575,905 horsepower. The location and the capacities of such steam-electric generating plants are shown in the following table:

STEAM-ELECTRIC PLANTS
OF APPLICANT

Name	No. of Plants	Total Horsepower	Location
1. Eureka	1	19,772	Eureka
2. Station "A"	1	184,317	San Francisco
3. Station "B"	1	25,134	Sacramento
4. Station "C"	1	160,020	Oakland
5. Station "P"	1	61,997	San Francisco
6. Station "Q"	1	21,448	San Francisco
7. North Beach	1	36,193	San Francisco
8. Bakersfield	1	33,512	Bakersfield
9. Midway	1	33,512	Buttonwillow
TOTAL	9	575,905	

Applicant owns and operates 6,138.5 miles of high voltage (60 kv or more) transmission lines.

Applicant owns and operates an electric distribution system extending into forty-six counties of northern and central California, and distributes electric energy in 137 incorporated cities and towns, in 235 unincorporated communities each having an estimated population of 250 and over, and in extensive rural areas in said forty-six counties.

Applicant owns and operates approximately 33,306 miles of distribution lines (44 kv or less), and the total number of electric customers served on June 30, 1940, was 909,155. The extent of the territory served by applicant is shown on the map immediately following this page.

All of the aforesaid electric plants, transmission lines and distribution lines are physically interconnected and constitute an integrated public utility system in California.

(b) Gas—Applicant owns and operates an extensive gas transmission and distribution system in northern and central California. (See attached map.) Ninety-nine per cent of the gas customers are served with natural gas which applicant purchases, with minor exceptions, in the Buttonwillow, Kettleman Hills, Ten Sections, Belridge, Trico, and Northeast Coalinga oil and gas fields, which are located in California approximately 200 miles south of San Francisco, and in five fields located respectively near Tracy, Rio Vista, Marysville, Stockton, and Fortuna, all in California. At Kettleman Hills, applicant owns and operates a large compressor station from which the gas is transported to the principal distribution systems through two large transmission pipe lines, one of which is owned by it and the other by Standard Pacific Gas Line, Incorporated. Applicant owns fifty per cent of the outstanding capital stock of Standard Pacific Gas Line, Incorporated, and the latter has agreed to set aside and reserve for the exclusive use of applicant one-half of the carryiny capacity of its gas line. Standard Pacific Gas Line, Incorporated, does not distribute or sell at retail any gas.

Applicant owns fifteen gas generating plants. Six of these plants, having a total daily capacity of

3,372,000 cubic feet of gas, are situated in Eureka, Willows, Grass Valley, Red Bluff, Redding, and Isleton, which are not connected with the natural gas transmission lines, and manufacture gas. The remaining nine gas generating plants are located in Colusa, Marysville, Modesto, San Francisco, Oakland, Sacramento, San Rafael, Stockton, and Fresno, which are now supplied with natural gas. Since the introduction of natural gas, the nine plants last above mentioned have been adjusted and equipped to furnish gas manufactured from Diesel oil (except Colusa Plant, which is equipped to furnish butane-air gas), and have a total daily capacity of approximately 147,628,000 cubic feet of gas. Gas so manufactured has a high heat content and may be mixed with or substituted for natural gas as occasion may require. These plants are used as stand-by against interruption of natural gas service and to meet demands in excess of the capacity of the gas transmission lines.

Applicant distributes gas in 101 incorporated cities and towns, in seventy-nine unincorporated communities each having an estimated population of 250 or more, and in numerous rural areas, in northern and central California.

In the following table are set forth the number of miles of gas transmission and distribution lines of Applicant, the number of incorporated cities and towns and unincorporated communities and

the number of gas customers served on June 30, 1940.

Miles Transmission Line	809
Miles Distribution Line	7,630
Incorporated Cities and Towns Served	101
Unincorporated Communities Served	79
Number of Gas Customers	636,316

(c) Other Properties—Applicant owns and operates an electric street railway and bus system in the City of Sacramento, steam heating systems in parts of the Cities of San Francisco and Oakland, and water distribution systems in fifteen cities and small towns, among which are King City, Salinas, Vacaville, Sonora, Selma, and Auburn, and a water system for irrigation and mining purposes in Placer County, and to a limited extent in certain isolated areas.

All of the public utility properties of applicant above described are located in California. Applicant does not purchase or sell any gas or electricity outside of California or at the state line.

Applicant owns and operates two transmission (60 kv) lines extending from its Spaulding and Drum Power Houses to Summit, which is located in California about twenty miles from the California-Nevada state line. Said transmission lines connect at Summit with transmission lines owned and operated by Sierra Pacific Power Company, which is a public utility company distributing electricity in both California and Nevada. Applicant sells and delivers electric power to said Sierra Pacific Power

Company at Summit under a contract, dated June 6, 1938. Said contract, which was approved by the Railroad Commission of California, provides for the sale at wholesale and delivery at Summit to Sierra Pacific Power Company of electric energy and stand-by service. The number of kilowatt hours sold to Sierra Pacific Power Company for the years 1935 to 1939 inclusive and the first six months of 1940 is shown under item 7 below.

Applicant also owns two transmission lines (one line being 60 kv and the other 110 kv) which connect near Delta (which is located in California about seventy miles below the Oregon-California state line) with the transmission lines of The California Oregon Power Company, a public utility company which generates and sells electric energy in both California and Oregon. Applicant purchases electric energy at wholesale from The California Oregon Power Company at Delta. The contracts under which said sale and delivery of power are made were entered into with the approval of the California Railroad Commission, and provide for the sale of a maximum of 42,600 kilowatts of electric energy. The number of kilowatt hours purchased from The California Oregon Power Company for the years 1935 to 1939 inclusive and the first six months of 1940 is shown under item 7 below.

The gas which is distributed and sold by applicant is all produced in California. Natural gas, constituting approximately 99 per cent of the gas

distributed, is purchased from producing companies operating, with minor exceptions, in the Kettleman Hills, Buttonwillow, Belridge, Northeast Coalinga, Ten Sections, and Trico oil and gas fields located in Fresno, Kings, Kern and Tulare Counties, in the Tracy and McDonald Island gas fields in San Joaquin County, in the Rio Vista gas field in Solano County, and in the Marysville-Buttes gas field in Sutter County, California. The artificial gas used by applicant is all manufactured in California. No gas is sold by applicant outside of California, or to any other company distributing gas outside of California.

7. Data showing the kilowatt hours (kwh) of electric energy, the thousands of cubic feet (mcf) of natural and manufactured gas and the approximate B. T. U. content of said gas sold by applicant and its former subsidiaries for the years 1932 to 1939 inclusive and the first six months of 1940.

The data with respect to the kilowatt hours and thousands of cubic feet of natural and manufactured gas sold in the years 1932, 1933, 1934, and the first six months of 1935 are shown on pages 18 and 19 of applicant's original application which was filed herein November 29, 1935, and those two pages are incorporated herein by reference.

The data with respect to the kilowatt hours of electric energy and the thousands of cubic feet of gas sold during the years 1935 to 1939 inclusive

and the first six months of 1940 are contained in Schedules (a), (b), (c), (d), and (e), which are attached hereto and made a part hereof.

Neither the applicant nor any of its subsidiaries distributes or sells gas or electricity outside of the State of California or at the border of said State. Neither the applicant nor any of its subsidiaries owns or operates any electric transmission or distribution line or any gas pipe line which delivers or receives gas or electricity outside of or at the border of the State of California. Neither the applicant nor any of its subsidiaries purchase gas or electricity outside of or at the border of the State of California.

8. Financial statements attached.

The consolidated profit and loss statements of applicant and its subsidiaries and the profit and loss statements of applicant and each of its former subsidiaries for the years 1932, 1933, and 1934 and the first six months of 1935 are attached to applicant's aforesaid original application which was filed with the Commission November 29, 1935, and are made a part hereof by reference.

The consolidated profit and loss statements of applicant and its subsidiaries for the years 1935 to 1939 inclusive and the first six months of 1940 are attached hereto and made a part hereof.

The consolidated balance sheet, at December 31, 1939, of applicant and its subsidiaries which are normally consolidated, is contained in applicant's annual report on Form 10K, for the year ending

December 31, 1939, as an answer to item 8. That balance sheet is hereby referred to and incorporated herein.

9. Rule U-3A-2—exemption of holding companies.

From the facts already set forth it appears that applicant comes within the provisions of Rule U-3A-2, subdivision (a), paragraphs (1) and (2). Applicant, in compliance with the provisions of Rule U-3A-2, subdivision (b), filed with the Commission, prior to March 1, 1940, a statement on Form U-3A-2, and has not been notified by the Commission that any substantial question of law or fact exists as to whether or not applicant is within the class of holding companies which the Commission may exempt under Section 3 (a) of the Act, or that the exemption afforded by paragraph (a) of this rule to applicant is or may be detrimental to the public interest or the interest of investors or consumers.

10. Note relating to Vallejo Electric Light and Power Company.

The shares of stock of Vallejo Electric Light and Power Company which are owned by applicant are carried on applicant's books as an investment, and the only income which applicant receives by reason of its ownership of that stock consists of the dividends declared and paid thereon. Applicant, as already stated, disclaims control of Vallejo Electric Light and Power Company and does not consider that that company is a subsidiary of applicant.

Applicant is informed and believes and therefore states that all of Vallejo Electric Light and Power Company's properties used by it in its public utility business consist of one or more substations and an electric distribution system located in the City of Vallejo, State of California, and in the immediate vicinity thereof, and that said Vallejo Electric Light and Power Company purchases from applicant all or substantially all of the electric energy which it distributes. Applicant does not possess and cannot readily obtain the detailed information with respect to Vallejo Electric Light and Power Company and its operation called for by the Commission's Rule U-3A-1, subdivision (b), paragraph (3), and respectfully submits that such detailed information, if provided, would be neither material nor relevant to the determination of the questions presented by this application. Applicant's sale and delivery of electric energy to Vallejo Electric Light and Power Company are regulated by the California Railroad Commission.

11. Note relating to other companies listed under item 4.

The principal assets of Arlington Properties Company, Ltd., are divers parcels of land situate in the State of California which are neither used nor required for use at the present time by applicant in connection with its public utility operations and business. Arlington Properties Company, Ltd., also

owns some shares of Western Canal Company stock and also all issued shares, viz., one thousand shares, of Crystal Lake Company, Ltd.

Crystal Lake Company, Ltd., owns a ranch in Shasta County, California, through which Hat Creek (the source of water supply for the Hat Creek power plants hereinbefore mentioned) flows. It has no other property.

Standard Pacific Gas Line Incorporated owns a pipe line which extends from the Kettleman Hills oil and gas field in Kings County to San Pablo in Contra Costa County and which is used in transporting natural gas. One-half the capacity of that pipe line is reserved for the use of the applicant, the other half being reserved and used for conveying gas for Standard Oil Company of California and one or more of its subsidiary companies. Standard Pacific Gas Line Incorporated does not distribute or sell any gas at retail or otherwise.

Valley Electrical Supply Company deals in electrical appliances at Fresno and vicinity in the San Joaquin Valley in California. It is not engaged in any public utility business.

Western Canal Company owns and operates an irrigation system in Butte and Glenn Counties, California. It is not engaged in any other business.

San Joaquin Light and Power Corporation is in process of voluntary winding up and dissolution. In 1938 and 1939, it distributed all of its public utility properties and assets to Pacific Gas and Electric Company, and now holds as its only asset

a relatively small sum of money deposited in Wells Fargo Bank and Union Trust Company in San Francisco.

None of the companies mentioned in this note owns any utility assets or is a public utility company within the meaning of those terms as defined in the Public Utility Holding Company Act of 1935.

12. Statement of reasons why applicant and its subsidiaries are entitled, under Section 3 (a), subdivisions (1) and (2), to exemption from the provisions of the Public Utility Holding Company Act of 1935.

Applicant and every subsidiary thereof are entitled, under Section 3 (a), subdivisions (1) and (2), to exemption from the provisions of the Public Utility Holding Company Act of 1935, because, as appears from the facts stated above,

(A) applicant and every subsidiary company thereof which is a public-utility company and every other subsidiary thereof are "predominantly intrastate in character" and carry on all their public utility business and substantially all their other business within the State of California in which the applicant and every such subsidiary company are organized (Section 3 (a), subdivision (1) of said Act), and

(B) The applicant "is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized" (Section 3 (a), subdivision (2) of said Act).

13. Application as evidence—Rule U-3, paragraph (d).

Pursuant to paragraph (d) of the Commission's Rule U-3, applicant offers in evidence Part A of this application (pages 1-14) entitled: "Statement of Facts in Support of Request for Order Under Section 3 (a), Subdivision (1) and (2)."

PART B. STATEMENT OF FACTS IN SUPPORT OF REQUEST FOR AN ORDER UNDER SECTION 2 (a), SUBDIVISION (8).

1. Name and address of applicant and of specified holding company.

(a) Applicant.

Pacific Gas and Electric Company,
245 Market Street, San Francisco, California.

(b) Specified holding company.

The North American Company,
60 Broadway, New York City, N. Y.

2. Names and addresses of all persons owning of record, or, if known, directly or indirectly controlling or holding with power to vote, more than three per cent of any class of voting securities or more than ten per cent of any other class of securities of applicant, giving, as to each class of securities involved, the amount outstanding and the amount so owned or controlled or held by each such person.

Applicant has only four classes of securities outstanding, viz.,

(a) Common stock, of which there are issued and outstanding 6,261,273 shares of the par value of $25 each;

(b) Preferred stock, of which there are now issued and outstanding 5,370,822 shares of the par value of $25 each;

(c) First and Refunding Mortgage Bonds issued by applicant, of which there are now outstanding bonds of the aggregate par value of $277,681,000, including bonds of the par value of $17,000 heretofore called for redemption but not yet presented for payment; and ,

(d) Bonds issued by San Joaquin Light and Power Corporation, the payment of which has been assumed by applicant and of which there are now outstanding bonds of the aggregate par value of $9,032,000, including bonds of the par value of $59,000 now held in applicant's treasury.

Holders of common stock and holders of preferred stock have full and equal voting rights. Each stockholder of record is entitled to one vote for each share of stock held. At any election of directors, each shareholder entitled to vote may cumulate his votes and give to one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which his shares are entitled, or to distribute his votes on the same principle among as many candidates as he chooses. Candidates receiving the highest number of

votes up to the number of directors to be elected shall be elected.

Holders of applicant's bonds have no voting rights.

The names and addresses of all persons owning of record, or, if known, owning beneficially or directly or indirectly controlling or holding with power to vote more than three per cent of any class of applicant's voting securities (i. e., issued shares of capital stock) are as follows:

Owner of Record	Class of Security	Number of Shares Owned
The North American Company 60 Broadway New York City, N. Y.	Common Stock	2,002,570
Beneficial Owner		
The North American Company 60 Broadway New York City, N. Y.	" "	57,100
Owner of Record		
Standard Gas and Electric Company 420 Lexington Avenue Chicago, Illinois	" "	200,420

The percentage of the total voting power represented by the shares of common stock owned by The North American Company, as owner of record and as beneficial owner, is 17.71 per cent.

The percentage of the total voting power represented by the shares of common stock owned by Standard Gas and Electric Company is 1.72 per cent.

To the best of applicant's knowledge and belief, no person or company owns so much as 10 per cent of applicant's outstanding bonds.

3. Names of the officers and directors of applicant and also the names of those officers and directors of applicant who are officers, directors, nominees or appointees of any holding, public-utility or investment company other than applicant.

Name	Office Held
Allen L. Chickering	Director
W. W. Crocker	"
J. F. Fogarty	"
Herbert C. Freeman	"
Norman B. Livermore	"
Chas. K. McIntosh	"
John D. McKee	"
C. O. G. Miller	"
Henry D. Nichols	"
S. H. Palmer	"
James B. Black	President and Director
P. M. Downing	Vice-President, General Manager and Director
John P. Coghlan	Vice-President and Assistant to the President and Director
D. H. Foote	Vice-President and Secretary-Treasurer and Director
A. E. Wishon	Vice-President and Assistant General Manager and Director
W. G. Vincent	Vice-President and Executive Engineer
R. E. Fisher	Vice-President in Charge of Public Relations and Sales
E. W. Hodges	Comptroller

Applicant is informed and believes and therefore states that the only officers or directors of applicant above named who are officers, directors, nominees or appointees of any holding or public utility company (as defined in the Public Utility Holding Company Act of 1935), other than applicant and its subsidiaries, are the following:

(1) Mr. Chickering, who is a vice-president and director of San Diego Gas and Electric Company;

(2) Mr. Coghlan, who is a director of Vallejo Electric Light and Power Company;

(3) Mr. Crocker, who is a director of Pacific Lighting Corporation;

(4) Mr. Miller, who is Chairman of the Board and a director of Pacific Lighting Corporation and also a director of the latter company's subsidiaries, Southern California Gas Company and Southern Counties Gas Company of California;

(5) Mr. Fogarty, who is Chairman of the Executive and Finance Committee and a director of The North American Company and also is an officer of other companies;

(6) Mr. Freeman, who is a vice-president and a director of The North American Company, and also is an officer of other companies.

Mr. James B. Black was elected president of applicant on November 20, 1935. Prior thereto and while he was a director of applicant, Mr. Black was a vice-president of The North American Company,

a vice-president and a director of Western Power Corporation, and a director of North American Utility Securities Corporation. On November 20, 1935, and prior to his election as president of applicant, Mr. Black tendered his resignation as vice-president of The North American Company, vice-president and director of Western Power Corporation, and director of North American Utility Securities Corporation, and severad all connection and relationship with said companies and their subsidiaries.

The board of directors of applicant, as provided by its articles of incorporation, consists of fifteen members.

4. A list and a brief statement of the nature of any contracts, agreements, or other arrangements, presently in force or in force at any time since December 31, 1933, providing for the furnishing of any management, supervision, or substantial services of a similar nature, to applicant by any company.

There are no such contracts, agreements or other arrangements.

5. The amount, interest rate, and name of lender, with respect to any loans or advances made to applicant by any company, as presently outstanding and as outstanding at each of the last three annual balance-sheet dates, excluding unsecured bank loans made in the ordinary course of business.

There are no such loans or advances. For bonds outstanding see ante item 2.

6. A brief description of any factors relevant to the question whether or not applicant directly or indirectly exercises control or a controlling influence over any other company.

Applicant exercises control over the following companies named in answer to item 4 of part A of this application, viz., Arlington Properties Company, Ltd., Crystal Lake Company, Ltd., San Joaquin Light and Power Corporation, Valley Electrical Supply Company, and Western Canal Company. Applicant does not, directly or indirectly, exercise control or a controlling influence over Standard Pacific Gas Line Inc., or Vallejo Electric Light and Power Company, or any other company except those mentioned in the last preceding sentence. For further particulars concerning the companies mentioned in this item 6, see Part A of this application, items 4, 10 and 11.

7. Brief statement of any factors relevant to the question whether or not control or a controlling influence, as described in clauses (i), (ii) or (iii) of Section 2(a) (8) is exercised directly or indirectly by any other company (including companies more than one degree removed from applicant) with respect to applicant or with respect to any other company through applicant.

(a) Applicant was organized in October, 1905, under the laws of the State of California, at the instance and under the direction of a small group of men who were large stockholders of California Gas

and Electric Corporation (a California corporation). Their primary purpose in organizing applicant was to acquire the properties and business of San Francisco Gas and Electric Company (also a California corporation), and to consolidate them with the properties and business of said California Gas and Electric Corporation. Soon after its organization, applicant acquired nearly all of the issued shares of capital stock of said California Gas and Electric Corporation and more than ninety per cent of the stock of said San Francisco Gas and Electric Company. Before January 1, 1912, applicant had acquired the business and all of the operating properties and other physical assets of said San Francisco Gas and Electric Company and California Gas and Electric Corporation; and, ever since its acquisition of those properties, applicant has been predominantly an operating public utility corporation and its public utility operations have been confined to the State of California.

(b) During the entire period of its existence, the members of applicant's board of directors, with few exceptions, have been residents of San Francisco and its vicinity, and have owned or represented substantial stock interests in applicant.

(c) On or about March 29, 1930, applicant entered into a contract bearing that date with said The North American Company (a New Jersey corporation) whereby applicant agreed to purchase from said The North American Company's subsidiary, Western Power Corporation (a New York

corporation), a majority of the issued and outstanding shares of stock of Great Western Power Company of California and San Joaquin Light and Power Corporation and all of the issued and outstanding shares of Midland Counties Public Service Corporation (all these being California corporations), and agreed to issue, in exchange therefor, upon the terms and conditions specified in said contract, 1,825,000 shares of applicant's common stock of the par value of $25 each to said Western Power Corporation. This contract was submitted to the Railroad Commission of the State of California by an application designated in that commission's records as No. 16,415. After a public hearing, the Railroad Commission of the State of California rendered its Decision No. 22,432 whereby it authorized the applicant to acquire the shares of stock which it had agreed to purchase, and to issue the shares of stock which it had agreed to issue, by the said contract of March 29, 1930. Pursuant to that decision, the transactions thereby authorized were consummated on or about June 12, 1930, by the transfer to applicant of the shares which it had agreed to purchase and by applicant's issue of 1,825,000 shares of its common stock to said Western Power Corporation. Applicant's acquisition of the stocks purchased under its said contract of March 29, 1930, with The North American Company was the first step in the execution of a plan already formed by applicant to acquire, and to consolidate with its own, the business and the electric plants, properties, and other

assets of said San Joaquin Light and Power Corporation, said Midland Counties Public Service Corporation, and said Great Western Power Company of California and the subsidiaries of the last named company. Applicant's said plan was disclosed to said Railroad Commission in said Application No. 16,415. The electric transmission and distribution systems of said Great Western Power Company of California and its subsidiaries in many places paralleled and duplicated those belonging to applicant. In pursuance of that plan, applicant acquired additional shares of stock of Great Western Power Company of California and San Joaquin Light and Power Corporation, and thereafter effected the winding up and voluntary dissolution of Great Western Power Company of California and all of its subsidiaries, and the voluntary winding up and dissolution of Midland Counties Public Service Corporation. San Joaquin Light and Power Corporation is now in process of winding up, and the completion of its proceedings for winding up and dissolution only awaits the determination of the rights of minority stockholders owning 353 shares (less than one-half of one per cent) of its common stock. All of the plants and properties of said Midland Counties Public Service Corporation and said Great Western Power Company of California and its subsidiaries and all of the plants, properties and other assets of San Joaquin Light and Power Corporation, except a sum of money reserved pending the determination of the rights of its minority

shareholders, have been distributed to applicant since January 1, 1936, under authority of orders made by said Railroad Commission. The results of the transactions described in this paragraph have been substantial economies in the management and operation of the properties formerly owned by San Joaquin Light and Power Corporation, Midland Counties Public Service Corporation, and Great Western Power Company of California and the latter's subsidiaries, the prevention of further duplication of electric power facilities, and substantial reduction of fixed charges by refunding outstanding obligations at lower interest rates.

(d) At May 31, 1930, and before the issue of said 1,825,000 shares of common stock pursuant to said contract of March 29, 1930, applicant had issued and outstanding stock as follows: 3,845,341 shares of common stock and 3,479,927 shares of preferred stock.

(e) Prior to the issuance by applicant of said 1,825,000 shares of its common stock to Western Power Corporation, former subsidiary of The North American Company, neither The North American Company nor any subsidiary thereof owned or held of record any share of applicant's issued stock.

(f) At no time have there been more than three members of applicant's board of directors who were appointed or elected by, or at the instance or upon the suggestion of, The North American Company and its subsidiaries, or any of them. At all times since its incorporation in October, 1905, except

short periods when there were temporary vacancies, applicant's board of directors has consisted of fifteen members.

(g) Applicant has never had any "service," "sales," or "construction contract" within the meaning of those terms as defined in subdivisions 19, 20, and 21 of Section 2(a) of the Public Utility Holding Company Act of 1935, with The North American Company or any subsidiary of The North American Company, or with any "holding company" or any "affiliate" within the meaning of those terms as defined in said act.

(h) Ever since its incorporation on October 10, 1905, applicant has been and now is an independent California public utility company managed and controlled by its board of directors, and ever since March 23, 1912, has been subject to regulation by the Railroad Commission of the State of California under the Public Utilities Act of that State.

(i) Neither The North American Company nor any subsidiary of said The North American Company has ever exercised, or attempted to exercise, either directly or indirectly, control or a controlling influence over the applicant or over the management or policies of applicant or any of applicant's subsidiaries.

(j) Never at any time since applicant issued shares of its stock to said Western Power Corporation on or about June 12, 1930, has either the North American Company or any of its subsidiaries received, either directly or indirectly, any money

or other valuable consideration from applicant or any of the latter's subsidiaries except the regularly declared dividends upon the common stock of applicant owned by The North American Company or its subsidiaries.

8. Statement of reasons why applicant is entitled to an order, under Section 2(a), subdivision (8) of said Act, declaring that neither applicant nor any of its subsidiaries is a subsidiary of The North American Company.

Applicant is entitled to an order under said Section 2(a), subdivision (8), declaring that neither applicant nor any of its subsidiaries is a subsidiary of The North American Company because, as appears from the facts stated above,

(i) applicant is not controlled, directly or indirectly, by The North American Company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever;

(ii) applicant is not an intermediary company through which such control of another company is exercised; and

(iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by The North American Company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the

public interest or for the protection of investors or consumers that the applicant be subject to any of the obligations, duties or liabilities imposed by said Holding Company Act upon subsidiary companies of holding companies.

9. Application as evidence — Rule U-3 paragraph (d)

Pursuant to paragraph (d) of the Commission's Rule U-3, applicant offers in evidence Part B of this application entitled: "Statement of Facts in Support of Request for an Order Under Section 2(a), Subdivision (8)," contained in the foregoing pages 15 to 25.

PRAYER

Wherefore, Pacific Gas and Electric Company prays (A) for an order, under Section 3(a), subdivisions (1) and (2), of the Public Utility Holding Company Act of 1935, exempting it and all of its subsidiaries from the provisions of said Act, and

(B) for an order, under Section 2(a), subdivision (8), of said Act, declaring that neither said Pacific Gas and Electric Company nor any of its subsidiary companies is a subsidiary of The North American Company.

Dated: San Francisco, California, October 31, 1940.

Corporate Seal
of
Pacific Gas and Electric
Company

PACIFIC GAS AND
ELECTRIC COMPANY
By JAMES B. BLACK
President

Attest:

D. H. FOOTE
Secretary

WM. B. BOSLEY
Counsel for Pacific Gas and
Electric Company

State of California,
City and County of San Francisco—ss.

James B. Black, being first duly sworn, deposes and says: That he is an officer, viz., the President, of Pacific Gas and Electric Company, a California corporation; that as such President he has executed the foregoing application for and on behalf of said corporation and in its name; that he has caused his execution of said application to be attested by the Secretary of said corporation, and the corporate seal of said corporation to be thereto affixed; that he has read the foregoing application and knows the contents thereof; and that all of the statements

therein contained are true to the best of his knowledge, information, and belief.

JAMES B. BLACK

Subscribed and sworn to before me this 1st day of November, 1940.

FRANK PANTER

Notary Public of the State of California in and for the City and County of San Francisco. My commission expires November 13, 1942.

[Notarial Seal]

COPY BOUND VERTICALLY

(a) Sales by Applicants and Each of Their Subsidiaries to Retail Consumers

Name of Company	1935	1936	1937	1938	1939	First Six Months 1940
	Kwh. Electricity Sold					
P. G. & E. Co.	1,774,706,114	2,611,203,827	2,917,264,725	2,939,852,376	4,150,854,291	2,024,169,847
Sierra & S. F. Power Co.	193,940,374	41,012,570	0			
G.W.P. Co. of Calif.	525,027,841	140,930,619	0			
Napa Valley Elec. Co.	3,531,367	871,760	0			
Mt. Shasta Power Co.	1,489,439	0	0			
S. J. L. & P. Corp.	549,086,513	633,771,378	723,712,216	685,795,106		
M. C. P. S. Co.	75,361,301	85,845,544	86,642,556	86,362,359		
Total Sales to Consumers	3,123,142,949	3,513,635,698	3,727,619,497	3,712,009,841	4,150,854,291	2,024,169,847
	M-Cf. Gas Sold					
P. G. & E. Co.—Mfg.	509,867.4	534,110.1	590,972.6	621,142.4	227,566.4	120,842.3
Natural	43,416,299.7	48,627,724.5	53,932,050.2	56,459,489.0	69,296,971.0	37,062,144.1
Modesto Gas Co.— Natural	701,475.9	0	0	0	0	
S. J. L. & P. Co.— Natural	3,762,631.5	4,008,253.0	4,694,536.8	5,013,335.3	0	
Total Sold to Consumers	48,390,274.5	53,170,087.6	59,217,559.6	62,093,966.7	69,524,537.4	37,182,986.4

Note: B.T.U. Heat Content: Natural Gas principally 1150 to 1180 Btu. per cubic foot, minor quantities served at approximately 1000, 1015 and 1040 Btu. per cubic foot; Manufactured Gas 540 Btu. per cubic foot.

(b) Sales by Applicants and Each of Their Subsidiaries Wholesale to Other Companies and Municipalities for Resale

Name of Company	Kwh. Electricity Sold					
	1935	1936	1937	1938	1939	First Six Months 1940
P. G. & E. Co.	136,788,740	161,305,687	191,808,136	180,940,367	258,713,369	112,858,173
Sierra & S. F. Power Co.	2,114,548	269,720	0			
G.W.P. Co. of Calif.	26,206,801	7,282,076	0			
Napa Valley Elec. Co.	0	0	0			
Mt. Shasta Power Corp.	0	0	0			
S. J. L. & P. Corp.	11,232,500	12,181,183	14,469,975	11,964,777		
M. C. P. S. Co.	1,501,359	1,703,645	1,905,829	1,950,884		
Total Sold to Other Companies & Municipalities for Resale	177,843,948	182,742,311	208,183,940	194,856,028	258,713,369	112,858,173
	M-Cf. Natural Gas Sold (1150 to 1180 B.t.u.)					
P. G. & E. Co.	273,567.4	269,422.2	313,770.8	383,045.9	410,250.0	241,747.0
Modesto Gas Co.	0	0				
S. J. L. & P. Corp.	0	0				
Total Sold to Other Companies for Resale	273,567.4	269,422.2	313,770.8	383,045.9	410,250.0	241,747.0

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(c) Total Sales by Applicants and Each of Their Subsidiaries (Sum of (a) and (b) Above)

Name of Company	1935	1936	1937	1938	1939	First Six Months 1940
	Kwh. Electricity Sold					
P. G. & E. Co.	1,911,494,854	2,772,509,514	3,109,072,861	3,120,792,743	4,409,567,660	2,137,028,020
Sierra & S. F. Power Co.	196,054,922	41,282,290	0			
G.W.P. Co. of Calif.	551,234,642	148,212,695	0			
Napa Valley Elec. Co.	3,531,367	871,760	0			
Mt. Shasta Pr. Corp.	1,489,439	0	0			
S. J. L. & P. Corp.	560,319,013	645,952,561	738,182,191	697,759,883		
M. C. P. S. Co.	76,862,660	87,549,189	88,548,385	88,313,243		
Consol. System Sales	3,300,986,897	3,696,378,009	3,935,803,437	3,906,865,869	4,409,567,660	2,137,028,020
	M-Cf. Gas Sold					
P. G. & E.—Mfd.	509,867.4	534,110.1	590,972.6	621,142.4	227,566.4	120,842.3
Natural	43,689,867.1	48,897,146.7	54,245,821.0	56,812,534.9	69,707,221.0	37,303,891.1
Modesto Gas Co.—Natural	701,475.9	0				
S. J. L. & P. Co.—Natural	3,762,631.5	4,008,253.0	4,694,536.8	5,013,335.3	0	
Consol. System Sales	48,663,841.9	53,439,509.8	59,531,330.4	62,477,012.6	69,934,787.4	37,424,733.4

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(d) Sales to Sierra Pacific Power Company at Summit, California (which are included in (b) above)

	Kwh. Sold					
Name of Company	1935	1936	1937	1938	1939	First Six Months 1940
	31,821,899	14,912,193	22,655,717	12,254,477	9,558,190	6,260,312

(e) Kilowatt-hours purchased by Pacific Gas and Electric Company and its Subsidiary, Mt. Shasta Power Corporation, from the California Oregon Power Company at Delta, California

	Kwh. Purchased					
Name of Company	1935	1936	1937	1938	1939	First Six Months 1940
	259,477,400	261,158,200	258,606,594	259,108,000	261,009,822	128,703,238

PACIFIC GAS AND ELECTRIC COMPANY

RESOLUTION ADOPTED BY EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS

Be it resolved by the Executive Committee of the Board of Directors of Pacific Gas and Electric Company that the acts of J. B. Black, the President, and D. H. Foote, the Secretary, of this corporation in executing, for and on behalf of this corporation and under its corporate seal, and the acts of William B. Bosley, the General Counsel of this corporation, in signing and filing with the Securities and Exchange Commission an amended and supplemental application, dated October 31, 1940, praying for an order, under Section 3 (a), subdivisions (1) and (2), and an order, under Section 2(a), subdivision (8), of the Public Utility Holding Company Act of 1935, be and they are hereby approved and ratified as the acts of this corporation.

I, D. H. Foote, do hereby certify that I am the Secretary of Pacific Gas and Electric Company, a corporation organized and existing under the laws of the State of California; that the above and foregoing is a full, true and correct copy of a resolution which was duly and regularly adopted by the Executive Committee of the Board of Directors of said company at a meeting of the said Committee which was duly and regularly called and held at the office of said company on the 4th day of November, 1940;

that the said resolution has never been amended, revoked or repealed, but is still in full force and effect; that the following is a true and correct copy of Section 3 of Article IV of the By-Laws of said corporation relating to the powers of said Executive Committee:

"Section 3. The Executive Committee of the Board of Directors, subject to the provisions of law, may, during the intervals between sessions of the Board of Directors, exercise any of the powers and perform any of the functions and duties of the Board of Directors; but the Board of Directors by resolution duly adopted, may at any time by the affirmative vote of two-thirds of its members withdraw or limit all or any of the powers of the Executive Committee.";

and that the Board of Directors of said corporation has not passed a resolution limiting the powers of said Executive Committee:

Witness my hand and the seal of said corporation hereunto affixed this 4th day of November, 1940.

D. H. FOOTE
Secretary of Pacific Gas and Electric Company

United States of America

Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 4th day of September, A. D. 1940.

In the Matter of Pacific Gas and Electric Company and Great Western Power Company of California. File No. 31-55.

NOTICE OF AND ORDER FOR HEARING

A joint application pursuant to the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named parties;

It is ordered that a hearing on such matter under the applicable provisions of said Act and the rules of the Commission thereunder be held on October 21, 1940, at ten o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered that Richard Townsend or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated

to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18(c) of said Act and to a trial examiner under the Commission's Rules of Practice.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before October 15, 1940.

The matter concerned herewith is in regard to a joint application for an order under Section 2(a)(8) of said Act declaring that neither Pacific Gas and Electric Company nor any of its subsidiaries are subsidiaries of The North American Company and for an order under Sections 3(a)(1) and (2) of said Act exempting said applicants and their subsidiaries from the provisions imposed by said Act upon holding companies and every subsidiary company thereof.

By the Commission.

FRANCIS P. BRASSOR
Secretary
Per ORVAL L. DU BOIS

[Title of Commission and Cause.]

APPLICATION FOR THE TAKING OF DEPOSITIONS

Pacific Gas and Electric Company, one of the applicants in the above-entitled matter hereinafter called "Applicant"), respectfully shows:

I.

At the hearing on the above-entitled matter, to be held on October 21, 1940, at 10 o'clock a. m., at the Securities and Exchange Building, Washington, D. C., the Applicant proposes to produce as witnesses the following persons, to-wit:

Name and Residence	Office Held with Applicant
Allen L. Chickering, San Francisco	Director
W. W. Crocker, San Francisco	"
James F. Fogarty, New York	"
Herbert C. Freeman, New York	"
Norman B. Livermore, San Francisco	"
John D. McKee, San Francisco	"
C. O. G. Miller, San Francisco	"
Silas H. Palmer, San Francisco	"
James B. Black, San Francisco	President and Director

Name and Residence	Office Held with Applicant
P. M. Downing, San Francisco	Vice-President, General Manager and Director
A. Emory Wishon,	Vice-President, Assistant General Manager and Director
E. W. Hodges, San Francisco	Comptroller

II.

Applicant desires to take the depositions of the following persons, to-wit:

Name and Residence	Office Held with Applicant
Charles K. McIntosh, San Francisco	Director
Henry D. Nichols, San Francisco	"
John P. Coghlan, San Francisco	Vice-President and Director
D. H. Foote, San Francisco	Vice-President, Secretary-Treasurer and Director

III.

The time and place proposed for the taking of said depositions are as follows, to-wit:

November 12, 1940, at 10 o'clock a. m., at San Francisco, California.

IV.

The matters concerning which it is expected that each of the persons named in paragraph II hereof will testify are as follows:

1. The securities of the Applicant owned by him and his family, or otherwise represented by him.

2. The securities of The North American Company and its subsidiaries, if any, owned by him and his family, or otherwise represented by him.

3. As to his business or profession, and business connections.

4. As to the circumstances concerning his election as a director of the Applicant.

5. As to any conversations or correspondence with the officers and directors of The North American Company.

6. As to his participation in the affairs of the Applicant and the meetings of its Board of Directors.

7. Generally as to facts concerning the policies, management and control of the Applicant.

8. In the case of Mr. Coghlan, the facts concerning the Applicant's acquisition of its stock interest in Vallejo Electric Light and Power Company, and concerning the management and control of the company last mentioned.

V.

The reasons why said depositions should be taken are as follows:

1. Mr. McIntosh is the Chairman of the Board of Directors of The Bank of California, N. A., and is now out of the State of California and will not return until October 16, 1940. Applicant believes and therefore states that it will be highly inconvenient, if not impossible, in view of Mr. McIn-

tosh's duties as Chairman of the Board of Directors of The Bank of California, for him to make a trip to testify at the hearing in Washington, D. C., which hearing will take place shortly after his return to San Francisco.

2. Mr. Nichols is uncertain as to his ability to attend the hearing in Washington, D. C., due to the illness of his wife.

3. In view of the fact that three of the Applicant's principal executive officers, namely, Messrs. Black, Downing, and Wishon, and its Comptroller, Mr. Hodges, propose to attend the hearing in Washington, D. C., the Applicant believes that Messrs. Coghlan and Foote should remain at the Applicant's offices in San Francisco in order to facilitate the transaction of the Applicant's business.

VI.

The present application is made without prejudice to the right of the Applicant to take the deposition of any of the persons mentioned in paragraph I in case any of such persons shall be unable to appear at the hearing in Washington, D. C.

Wherefore the Applicant requests the Securities and Exchange Commission to issue an order for the taking of the depositions of the persons named in paragraph II, and specifying the time when, the place where, and the designated officer before whom, said persons are to testify.

Dated: San Francisco, Calif., October 2, 1940.

PACIFIC GAS AND
ELECTRIC COMPANY
By J. B. BLACK
President
245 Market St., San Francisco, Cal.

Attest:

D. H. FOOTE
Secretary
HERMAN PHLEGER
ROBERT H. GERDES
WM. B. BOSLEY
Counsel for Pacific Gas and Electric Company
245 Market St., San Francisco, Cal.

State of California,
City and County of San Francisco—ss.

The undersigned being duly sworn deposes and says that he has duly executed the attached Application for the Taking of Depositions, dated October 2, 1940, for and on behalf of Pacific Gas and Electric Company; that he is the president of such company, and that no action by stockholders, directors, and other bodies is necessary to authorize deponent to execute and file such instrument. Deponent further says that he is familiar with such instrument, and the contents thereof, and that the facts therein

set forth are true to the best of his knowledge, information and belief.

J. B. BLACK

Subscribed and sworn to before me this 3rd day of October, 1940.

FRANK PANTER

Notary Public of the State of California in and for the City and County of San Francisco. My commission expires November 13, 1942.

[Title of Commission and Cause.]

ORDER CHANGING TIME AND PLACE OF HEARING AND DESIGNATING DIFFERENT TRIAL EXAMINER.

The Commission having on the 4th day of September, 1940, issued a Notice Of and Order for Hearing in the above matter to be held on the 21st day of October, 1940 at the Securities and Exchange Building, 1778 Pennsylvania Avenue, N. W., Washington, D. C. and having by the same order designated Richard Townsend, an officer of the Commission, to preside at said hearing; and

The Commission being now of the opinion that due to the fact that most of the prospective witnesses as well as numerous holders of applicant's securities and other interested persons reside in and near San Francisco, California that said hearing should be held at that place;

It is therefore ordered that the Notice Of and

Order for Hearing heretofore issued in this matter be modified;

It is further ordered that said hearing be held on the 12th day of November, 1940, at 10:00 o'clock in the forenoon of that day, at the Regional Office of the Securities and Exchange Commission located at 625 Market Street in the City of San Francisco, California; that John Clarkson or any other officer or officers of the Commission designated by it for that purpose shall preside at said hearing; and that after the commencement of said hearing at said time and place, the same may be continued by the Trial Examiner to such further date and to such other place as the circumstances may warrant.

By the Commission.

FRANCIS P. BRASSOR,
Secretary.

In the Matter of the Joint Application to Securities and Exchange Commission of Pacific Gas and Electric Company and its Subsidiaries Great Western Power Company For an Order that They Are not Subsidiaries of The North American Company. (File 31-55)

Edward P. E. Troy
Being Duly Sworn
Says:

I am 73 years of age. I have been a resident and citizen of San Francisco, California, where I was born in 1867, and have lived all my life, except two

years, when I was 17 to 19 years of age. At that time my father lived in San Rafael, Marin County, California, from whence we commuted every day to the "city".

I have been a taxpayer in my city for more than fifty years. I am a consumer of gas and electricity furnished by Pacific Gas and Electricity.

I have been writing on public ownership, public utility questions, taxation and other economic questions for more than fifty years. I have made particular studies of the reports, trials and other material relating to Pacific Gas and Electric Company for more than thirty years.

I have always endeavored to let the people of California and my city know the truth about this Company and its statements. One such matter which I have been at work on for some months is the statement being publically broadcast by P. G. and E. that it has reduced gas and electric rates $5,000,000.00 during the past month. There is not a word of sworn testimony or evidence open to the public that will verify that assertion, nor any figures or data. My information is that no sworn testimony was taken by any public body in that matter.

I desire to participate in this proceeding solely for the interest of consumers and the public interest of my city and State. I believe that the only way in which such interests, and of investors as well, can be protected is for your Securities and Ex-

change Commission to retain as full and complete control over these companies as is possible.

EDWARD P. E. TROY.

State of California
City and County of San Francisco.

Subscribed and sworn to before me this 13th day of November, 1940.

NELL O. DAY,
Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires March 26, 1944.

[Title of Commission and Cause.]

ORDER DENYING INTERVENTION BUT PERMITTING LIMITED PARTICIPATION IN HEARING.

The Securities and Exchange Commission having on the 4th day of September, 1940, issued its Notice of and Order for Hearing in the above matter;

Edward P. E. Troy having filed an application to intervene in said proceedings, representing that he is a taxpayer of the City of San Francisco and a consumer of gas and electricity furnished by the above named company;

It not appearing from the facts alleged in said application that the applicant has sufficient interest in said proceeding to render his admission as

a party thereto in the public interest or for the protection of investors or consumers;

It is ordered that said application to intervene be, and the same hereby is denied without prejudice to the right of said applicant to renew his application for leave to intervene and to be made a party to said proceeding at a future date;

It is further ordered that the said Edward P. E. Troy shall be permitted to participate at any hearing in this matter to the extent of introducing evidence and cross-examining witnesses; provided, however, that such evidence and cross-examination are competent, relevant and material to the issues involved.

By the Commission.

FRANCIS P. BRASSOR,
Secretary.

[Title of Commission and Cause.]

TESTIMONY

Room 403, Civic Auditorium Building,
San Francisco, California,
Tuesday, November 12, 1940.

Met, pursuant to notice of the Commission, at 10:00 o'clock a. m.

Before:

JOHN G. CLARKSON, Trial Examiner.

Appearances:

E. M. CALKIN, Attorney for the Securities and Exchange Commission.

W. B. BOSLEY, ROBERT H. GERDES and HERMAN PHLEGER, 245 Market Street, San Francisco, California, Attorneys for the Applicant.

IRA H. ROWELL, 514 State Building, San Francisco, California, appearing for the Railroad Commission of the State of California. [1*]

PROCEEDINGS

The Examiner: This is a hearing in the matter of the application of the Pacific Gas and Electric Company, et al., under Section 2 (a) (8) and 3 (a) (1) and (2) of the Public Utility Holding Company Act of 1935.

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*Page numbering appearing at top of page of original Reporter's Transcript.

Pursuant to order of the Securities and Exchange Commission on October 10, 1940, the hearing previously ordered to be held in Washington was changed and the Commission directed the hearing be held on the 12th of November, 1940, at 10:00 o'clock in the forenoon at the Regional Offices of the Securities and Exchange Commission, San Francisco, California, and designated me as the Trial Examiner.

In view of the fact that the facilities at the offices of the Regional Office of the Commission were inadequate, arrangements were made and authorized by the Commission to conduct the hearing here, to which point I ordered it be continued from 625 Market Street.

The hearing is now open.

Have you the appearances of all the parties, Mr. Reporter?

The Reporter: I think so.

The Examiner: Miss Esther Calkin represents the Securities and Exchange Commission.

Mr. Herman Phleger represents the Applicant.

I do not know whether there are any other appearances or not. [2]

Mr. Bosley: I will state the appearances for the Applicant. The appearances are myself, William B. Bosley, counsel for the Pacific Gas and Electric Company, Mr. Herman Phleger and Mr. Robert H. Gerdes.

Mr. Phleger and Mr. Gerdes will take the active lead in presenting the evidence and the case generally.

The Examiner: Thank you.

Mr. Rowell: The Railroad Commission of the State of California, by its attorney, Ira H. Rowell, did not deem it appropriate to ask to intervene in this proceeding, but would like this opportunity of presenting a memorandum in respect to the jurisdiction of the Commission and the authority exercised heretofore.

Miss Calkin: I believe it would be more proper to get the order authorizing this proceeding in evidence first. It is a preliminary matter.

The Examiner: The record will note, Mr. Rowell, that you have appeared as a representative of the Railroad Commission and at an appropriate time we will be glad to receive your statement.

Miss Calkin: I offer in evidence as Commission's Exhibit No. 1, the notice of and order for hearing in the matter of the Pacific Gas and Electric Company and the Great Western Power Company of California, File No. 31-55, dated September 4, 1940.

[3]

I wish to state for the record that that order was published in the Federal Register for Friday, September 6, 1940, page 3587, Volume 5, No. 174, and was released to the press by Holding Company Release Act, Release No. 2276.

I also wish to offer in evidence as Commission's Exhibit No. 2 an order changing the time and place of hearing and designating a different Trial Examiner, dated October 10, 1940 in the same proceeding, and I will state for the purpose of the record that

this order was released to the press by Holding Company Act Release No. 2325.

I would like to ask that these two releases be marked as Commission's Exhibits 3 and 4; Release No. 2276 being Exhibit No. 3 and Release No. 2325 being Commission's Exhibit No. 4.

I offer Commission's Exhibits 1 to 4 inclusive in evidence at this time.

The Examiner: Without objection the documents as described will be received in evidence respectively as Commission's Exhibits 1, 2, 3 and 4.

(The notice of and order for hearing referred to above was marked Commission's Exhibit No. 1 and received in evidence.)

(The order changing time and place and designating new Trial Examiner referred to above was marked Commission's Exhibit No. 2 and received in evidence.) [4]

(Release No. 2276 referred to above was marked Commission's Exhibit No. 3 and received in evidence.)

(Release No. 2325 referred to above was marked Commission's Exhibit No. 4 and received in evidence.)

Miss Calkin: Nothing further for the Commission at this time.

The Examiner: All right, Mr. Rowell.

Mr. Rowell: If it is appropriate then, Mr. Commissioner, I would like to offer in evidence the original of the memorandum to which I referred.

The Examiner: Have you seen that, Mr. Phleger?

Mr. Phleger: Yes. Mr. Rowell gave me a copy.

The Examiner: Have you seen it, Miss Calkin?

Miss Calkin: No objection. I haven't had an opportunity to read it, but I have no objection.

Mr. Rowell: It might be appropriate also to have available a copy of the Public Utilities Act of the State of California.

I also have a copy here of the Commission's Uniform System of Accounts covering electric corporations, and its Uniform System of Accounts covering gas corporations.

If the Commission so desires I will be glad to leave these with you.

The Examiner: If you will. I think that they would be helpful to the staff of the Commission in considering this [5] matter.

Mr. Phleger: It was our intention to introduce in evidence the latter two items and I suggest they might as well be introduced in evidence now.

Miss Calkin: No objection.

The Examiner: We will keep them and at the appropriate time have them numbered in accordance with the plan you have in presenting your case.

Mr. Phleger: Do I understand that the statement of the Railroad Commission has been admitted in evidence? If so, what is the exhibit number?

The Examiner: Do you want that marked as a Commission exhibit, or what are your desires in the matter?

Mr. Phleger: I assume it should be marked a Railroad Commission exhibit.

Miss Calkin: The Railroad Commission hasn't intervened, but they have made an appearance and I think the record should show it was introduced by counsel for the Railroad Commission. I think that would be their only exhibit.

The Examiner: The statement will be received in evidence and marked RC No. 1.

(The statement of the Railroad Commission above referred to was marked RC Exhibit No. 1.)

Mr. Phleger: And the Public Utilities Act will be RC No. 2? [6]

The Examiner: Yes; RC No. 2.

(The copy of Public Utilities Act above referred to was marked RC Exhibit No. 2 and received in evidence.)

Mr. Phleger: The Uniform System of Accounts——

The Examiner: I thought you were going to introduce those.

The Uniform System of Accounts for electric corporations will be received in evidence and marked RC No. 3.

The Uniform System of Accounts for gas corporations will be received and marked RC No. 4.

(The Uniform System of Accounts for electric corporations was marked RC Exhibit No. 3 and received in evidence.)

(The Uniform System of Accounts for gas corporations was marked RC Exhibit No. 4 and received in evidence.)

Mr. Phleger: I take it there is no objection on the part of the Commission.

The Examiner: I think Miss Calkin has indicated she has no objection.

Mr. Phleger: All right.

Miss Calkin: Off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record. [7]

Mr. Phleger: The applicant will offer in evidence the original application of the Applicant filed November 29, 1935, and I ask that it be marked Applicant's Exhibit No. A.

Miss Calkin: I think it would be better to mark them all 1, 2, 3, and so on, designating them as Commission's exhibit or Applicant's exhibit.

Mr. Phleger: That is all right with me. I asked the Examiner and he suggested that the Applicant's exhibits be marked A, B, C and so on.

The Examiner: I indicated the Applicant's exhibits would be letters, rather than numbers. But if you prefer to have them numbered it will be all right.

Miss Calkin: If there are to be a number of exhibits I think it would be better to have them numbered instead of lettered.

Mr. Bosley: I think we might run out of letters.

The Examiner: I have no objection. We could go through the alphabet several times of course.

Applicant's Exhibit No. 1 is received without objection.

(The original application above referred to was marked Applicant's Exhibit No. 1 and received in evidence.)

Mr. Phleger: I now offer in evidence the amended and supplemental application of the Applicant filed with the Commission on November 6, 1940, and ask that it be marked Applicant's Exhibit No. 2.

[8]

The Examiner: Applicant's Exhibit No. 2 will be received and so marked.

(The amended and supplemental agreement above referred to was marked Applicant's Exhibit No. 2 and received in evidence.)

Mr. Phleger: Our first witness will be Mr. P. M. Downing.

Do I understand, Mr. Examiner, that applications for an Examiner's Report and for special findings are to be made at the outset of the hearing?

The Examiner: I do not know that it matters. The custom usually observed is that the request be made at the close of the hearing. The Rules and Practice before the Commission, however, provide that in proceedings under the Public Utility Act the Trial Examiner does not ordinarily make findings. However, if a request is made that request will be communicated to the Commission and in the

event the Commission directs the Trial Examiner to make them, of course, they will be made. In the event request is to be made for findings, such findings can be made by the Trial Examiner.

I will at the same time direct the attention of counsel for all parties appearing here to the provisions of Rule 9 of the Rules and Practice, Subdivision (e), I believe it is, where it provides that counsel for either party, or all parties, may submit to the Trial Examiner a statement setting forth a specific request for findings, which may or may not be accompanied by a brief in support thereof. [9]

I think your request would be just as appropriate at the close of the hearing as at this time. You can do what you like.

Mr. Phleger: I did not want to violate the rules in any respect. If this is the inappropriate time we will repeat it at the close of the taking of testimony.

At this time we want to record a request for a transcript, the request for special findings by the Trial Examiner, and also for a report by the Trial Examiner.

We will repeat that request at the end of the proceeding.

The Examiner: All right.

Before you proceed with the examination of your first witness, Mr. Phleger, I understand, Mr. Rowell, that you do not desire to make a formal petition to intervene, but merely to submit this statement and a copy of the Act and the copies of the uniform accounting system?

Mr. Rowell: That is correct, Mr. Trial Examiner.

I might add this: That about the time that the matter was first set for hearing it is my understanding that the President of the Pacific Gas and Electric Company, Mr. Black, consulted with one of our Commissioners and made the suggestion that perhaps the Commission would like to intervene in this proceeding.

After a conference with myself the Commission indicated that intervention in the ordinary acceptance of that term, meaning taking a position either for or against, would be [10] inappropriate; but the Commission thought it would be desired by the Securities and Exchange Commission, and would be helpful, if it prepared a memorandum revealing the scope of the authority exercised by the California Commission, particularly as applied to the Pacific Gas and Electric Company, the Applicant here.

So, in response to that suggestion, I have prepared such a statement and I trust that it will be deemed to be purely a representation as to the authority which the Commission exercises, and not as a pleading in support of or in objection to the application pending here.

If it is appropriate that we file an application to intervene formally, and if you will so advise me, we will take that action.

The Examiner: I just want to be clear in the matter. I presume you will be available if either party wants to call you as a witness?

Mr. Rowell: Correct.

The Examiner: Does any member of the public, or any representative of anyone, desire to petition to intervene in this proceeding at the present time? (No response.)

If not, you may proceed with your examination, Mr. Phleger. [11]

Whereupon—

P. M. DOWNING

was produced as a witness for and on behalf of the Applicant and, after having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Downing, will you state your name for the record? A. P. M. Downing.

Q. Where do you reside, Mr. Downing?

A. 1980 Washington Street, San Francisco.

Q. What position do you hold with the Pacific Gas and Electric Company, the Applicant?

A. I am Vice-President and General Manager and Director.

Q. When were you appointed to the position of Vice-President and General Manager?

A. August 1, 1929.

Q. You have occupied that position ever since, have you? A. Yes, sir.

Q. When did you first become a Director of the Applicant?

(Testimony of P. M. Downing.)

A. When I became General Manager. [12]

Q. And you have since, and now serve in that capacity, do you? A. Yes, sir.

Q. When did you first come to California?

A. About 1878 or 1879.

Q. Have you since resided in California?

A. Continuously since that time.

Q. Will you briefly state your education?

A. I attended the usual grammar schools, and then attended Stanford University, graduating with the class of 1895.

Q. What studies did you pursue in the University? A. Electrical engineering.

Q. After your graduation in 1925——

The Examiner: 1895.

By Mr. Phleger:

Q. —1895, what positions did you assume and what work did you undertake?

A. My first work was with the Tacoma Light & Power Company in Tacoma. After leaving that company I was with the Market Street Railway Company.

In 1897 I went with the Blue Lakes Water Company. After remaining with them for a time I went with John Martin & Company; then with the Standard Consolidated Mining Company.

In 1901 I became associated with a company which has [13] since become a part of the Pacific Gas and Electric Company.

(Testimony of P. M. Downing.)

Q. With respect to the Blue Lakes Water Company, are the properties of that company now a part of the properties of the Pacific Gas and Electric Company? A. Yes sir.

Q. What course did they pursue in becoming properties of the P.G.&E.?

A. The Blue Lakes Water Company was absorbed by the Standard Electric Company, and the Standard Electric Company was later taken over by the California Gas & Electric Corporation. The California Gas & Electric Corporation was taken over by the Pacific Gas and Electric Company.

Q. So that your first work on the Blue Lakes Water Company was on properties which are now a part of the Pacific Gas and Electric Company system? A. Yes, sir.

Q. Who is John Martin?

A. John Martin was at one time a salesman for a hardware concern here in San Francisco. Then he had the agency for a pipe concern, eastern pipe concern. Then he took over the agency of the Stanley Electric Manufacturing Company and was very active in the promotion of some of the early California hydro-electric plants, which have since become a part of the Pacific Gas and Electric Company.

Q. And you spent approximately two years with John [14] Martin & Company, did you?

A. Not quite that long; about a year, I would say.

(Testimony of P. M. Downing.)

Q. And during that period—that was a period after you were associated with the Blue Lakes Water Company? A. Yes.

Q. What were your duties with John Martin & Company?

A. I was installing and operating electric equipment and doing construction work for John Martin & Company.

Q. On the properties which have since become properties of the Pacific Gas and Electric Company?

A. Yes; I think all of those properties have since become a part of the Pacific Gas and Electric Company.

Q. Will you state what positions you have held with the Pacific Gas and Electric Company during the approximate forty years you have been with it?

A. I started as Manager of the Colusa Gas & Electric Company in 1901.

After leaving the Colusa Gas & Electric Company I went to work as a line construction foreman.

Later I was on the installation of electric equipment in sub-stations and power houses.

Later I became superintendent of sub-stations.

Then I became Engineer of operations.

Then I became Vice-President in charge of electric operations. [15]

Still later I became Vice-President in charge of electric construction and operation.

(Testimony of P. M. Downing.)

Then I was appointed Vice-President and General Manager.

Q. During the period that you have been with the Pacific Gas and Electric Company have you engaged in any outside business ventures?

A. No; none whatever.

Q. The position which you hold with the Pacific Gas and Electric Company is your main business endeavor and you have no outside interests, other than personal ones?

A. That is correct. I devote my entire time to the Pacific Gas and Electric Company work.

Mr. Phleger: Mr. Examiner, I will offer in evidence a drawing, and we will post on the blackboard a larger reproduction of the same drawing. I will ask that the drawing be received in evidence as Applicant's Exhibit No. 3.

This drawing is marked "Pacific Gas and Electric Company, the Origin and Development of Pacific Service", prepared by the Valuation Department of the Pacific Gas and Electric Company.

By Mr. Phleger:

Q. Mr. Downing, I show you the map which I have just described and which I have offered in evidence.

I take it, it may be received?

The Examiner: Any objection? [16]

Miss Calkin: No objection.

(Testimony of P. M. Downing.)

The Examiner: Without objection it will be received in evidence and marked Applicant's Exhibit No. 3.

(The map above referred to was marked Applicant's Exhibit No. 3 and received in evidence.)

By Mr. Phleger:

Q. Mr. Downing, will you describe the map and state what it is intended to show by it?

A. This is a diagramatic representation showing the dates of organization of the various companies which have since become a part of the Pacific Gas and Electric Company.

It will be noted from the map that the lefthand side shows the year 1850, and moving toward the right the various years are shown to 1939.

The dates on which these various companies, which now go to make up the Pacific Gas and Electric Company, are shown by lines starting from the left, during the years that the companies were organized.

By way of illustration, take the one up near the top of the map, shown as Stockton Gas Company. That lines starts in 1859. That represents the year that the Stockton Gas Company was organized.

Following that line to the right it will be seen that in 1887 there is a vertical break in that line. That indicates that a consolidation took place at

(Testimony of P. M. Downing.)

that time between the [17] Stockton Gas Company and the Stockton Gas, Light & Heat Company.

Following it further along to the right you will see other changes there in the corporate structure and other consolidations.

Following it on over to 1910 it will be noted that the Stockton Gas & Electric Corporation, as it was at that time, became a part of the Western States Gas & Electric Company, along with the Humboldt Gas & Electric Company. It continued as Western States Gas & Electric Company until 1927, when there is another vertical break, and it was in 1927 that the Pacific Gas and Electric Company acquired control of the Western States Gas & Electric Company.

You will note that that vertical line breaks down and merges in eventually to the Pacific Gas and Electric Company's solid black line.

The cross hatched at the bottom of that vertical line where it joins the Pacific Gas and Electric Company indicates that the Pacific Gas and Electric Company acquired control through stock ownership; but in 1928, the latter part of 1928, the physical properties of the Western States Gas & Electric Company were taken over by the Pacific Gas and Electric Company and Western States Gas & Electric Company was ultimately dissolved.

The Examiner: That cross hatched or shaded portion in [18] these other instances also indicates stock ownership?

(Testimony of P. M. Downing.)

The Witness: Yes.

The Examiner: When it turns to black that is a merger and a discontinuance of the previous separate corporate entity?

The Witness: Yes.

By Mr. Phleger:

Q. Mr. Downing, does the Pacific Gas and Electric Company conduct its public utility operations in the State of California directly, that is, without the intervention of subsidiary operating companies?

A. Yes.

Q. About how many separate public utilities have gone into the present single operating entity of the Pacific Gas and Electric Company?

A. I couldn't tell you the exact number of the utilities. The Pacific Gas and Electric Company as it stands today, however, represents the consolidation of something over 400 different companies. Some of those companies were public utility companies and some were non-utility companies.

Q. The great bulk of them were public utility companies?

A. A very large percentage of them were utilities.

Q. Will you now briefly outline the history of the Pacific Gas and Electric Company?

A. The Pacific Gas and Electric Company started back [19] in about 1896 or 1897. It goes back further than that. It goes back to the early

(Testimony of P. M. Downing.)

nineties when E. J. DeSabla, who had been in the coffee exporting business here in San Francisco, became interested in mining properties in Nevada County.

In casting about for power to carry on his operations Mr. E. J. DeSabla conceived the idea of developing hydro-electric power on the South Yuba River.

Working in cooperation with Mr. John Martin who, as I have stated, at that time had the Pacific Coast agency for the Stanley Electric Manufacturing Company, they put in a small hydro-electric plant on the South Yuba River near Nevada City, utilizing the power from that plant, first, for mining operations and later for supplying Grass Valley and Nevada City.

Very shortly after this plant was started Mr. John Martin started construction of another plant in Yuba County, utilizing a waterfall available on the irrigation system of the Brown's Valley Irrigation District. That head there had heretofore been wasted, but Mr. Martin utilized that for the production of power and that power was utilized for supplying service in Brown's Valley and Marysville.

The Examiner: What are the names of those two companies?

The Witness: The Yuba Power Company was the plant that Mr. Martin constructed on the water system of the Brown's Valley Irrigation Company.

(Testimony of P. M. Downing.)

The Examiner: That is not shown on the chart? [20]

The Witness: Yes, I think you will find it on that chart. I don't think we overlooked it.

The Examiner: I was searching for it. You said it was sometime during the 90s and I couldn't find it. Maybe I overlooked it.

Just a minute—I have found it here (indicating). It shows, beginning in 1897.

The Witness: That was when the Yuba Power Company was started.

The Examiner: That is right.

The Witness: Very shortly after the completion of that plant of the Yuba Power Company it became overloaded and another company, known as the Yuba Electric Power Company, was organized during the latter part of 1898, or the early part of 1899. That company absorbed the Yuba Power Company and constructed another plant, known as Colgate, on the North Yuba River.

Colgate relieved the overload on the Yuba plant and early in 1900 transmission lines were extended from Colgate into Sacramento and a part of the load on the Sacramento Electric, Gas & Railway Company was thereafter carried on the Colgate system.

By Mr. Phleger:

Q. Mr. Downing, if I may interrupt, the earliest company of John Martin that was founded in 1892, do you recall [21] what its name was?

(Testimony of P. M. Downing.)

A. Nevada County Electric Company. That was the one in which E. J. DeSabla was primarily interested in, although Mr. Martin was associated with him.

Mr. Phleger: Mr. Examiner, I think this is the one you were looking for in 1892; that was the one that was referred to.

The Examiner: According to this exhibit here, Applicant's Exhibit 3, that does appear just below the Yuba Power Company and shows that it merged, or consolidated with the Yuba Electric Power Company in 1900.

Mr. Phleger: Yes, but it was the 1892 one that was first referred to.

The Witness: That was the first of the plants to be constructed.

By Mr. Phleger:

Q. If you will go ahead, please, Mr. Downing.

A. The next step was the formation of the Bay Counties Power Company in 1900. That company constructed transmission lines from Colgate into Oakland and supplied power to the Oakland Traction Company.

The Examiner: That Bay Counties Power Company was a merger or consolidation of these other two, was it not?

The Witness: Yes.

The Examiner: And, subsequent to that merger, extended [22] its line, as you say, to the Bay District?

(Testimony of P. M. Downing.)

The Witness: Yes; into Oakland and the Bay area.

The Examiner: All right.

A. (continuing) Very shortly after those lines were completed into Oakland Messrs. Martin and DeSabla acquired control of the Oakland Gas, Light & Heat Company, which supplied power in Oakland and vicinity.

In the meantime they also acquired a number of small independent companies suplying limited areas in the north central part of California. Among those acquired properties were the San Rafael Gas & Electric Company, the Santa Rosa Lighting Company, the Merchants Lighting Company of Santa Rosa, the Marysville Gas & Electric Company, the Nevada City Gas Company, the Grass Valley Gas Company, the Napa Gas & Electric Company, the Colusa Gas & Electric Company, the Woodland Gas & Electric Company, the Chico Gas & Electric Company, the Petaluma Gas & Electric Company. Practically all of these companies were dependent for their power supply on steam plants, many of which were rather obsolete, inefficient and inadequate.

In March of 1901 the California Gas & Electric Company was organized and took over all of the plants which I have just named, these small independent plants. Eventually the California Central Gas & Electric Company became a part of the California Gas & Electric Company, a corporation, and the [23] California Gas & Electric Corporation ulti-

(Testimony of P. M. Downing.)

mately became a part of the Pacific Gas and Electric Company.

With the load growth and the extension of services, electric service in areas not theretofore served, the various plants then in operation soon became overloaded and the Valley Counties Power Company was formed and the DeSabla Power House on Butte Creek was constructed.

The Valley Counties Power Company was financed and controlled by John Martin and E. J. DeSabla and their associates. They also acquired the Centerville Power House from the Butte County Electric Light & Power Company, this latter plant being located on Butte Creek a short distance below the DeSabla Power House. Power from those two plants was delivered into the system of the Bay Counties Power Company.

In 1897 the Standard Electric Company of California was organized. It took over the water and the electric properties of the Blue Lakes Water Company and proceeded with the development of the electro-hydro plant on the Mokelumne River in Amador County.

Power from this plant was first supplied to the mines and the various towns along the Mother Lode in Amador and Calaveras Counties, but later a line was constructed into Stockton, and power was distributed to the Stockton Gas & Electric Company; and still later lines were extended to San Francisco and Oakland, and power supplied to the San Fran-

(Testimony of P. M. Downing.)

[24] cisco Gas & Electric Company and the Oakland Gas, Light & Heat Company.

By Mr. Phleger:

Q. Mr. Downing, who were the principal active figures in the affairs of the Standard Electric Company?

A. Mr. W. H. Crocker was the moving spirit in the Standard Electric Company.

Q. Is he the W. H. Crocker who later became a Director of the Pacific Gas and Electric Company?

A. Yes.

Q. And served for many years?

A. Up until the time of his death; yes.

Q. And he is the father of W. W. Crocker, who is now a Director of the Pacific Gas and Electric Company, is he?

A. Yes. Mr. W. W. Crocker succeeded his father as a Director of the Pacific Gas and Electric Company.

Q. Proceed.

A. The organization of the California Gas & Electric Corporation of 1901 marked the beginning of a series of consolidations of many small companies, the control of which had theretofore been acquired.

Some of the major companies taken over by the California Gas & Electric Corporation during 1903, 1904 and 1905 are the following: Bay Counties Power Company, Oakland Gas, Light & Heat Com-

(Testimony of P. M. Downing.)

pany, Sacramento Electric, Gas & Railway Company, [25] Standard Electric Company of California, United Gas & Electric Company, South Yuba Water Company, California Central Gas & Electric Company and the Fresno Gas & Electric Light Company.

Q. Mr. Downing, do you recall the names of the principal figures in the Sacramento Electric, Gas & Railway Company?

A. Mr. Gallatin and Mr. Livermore.

Q. Was that Mr. Livermore the father of Norman Livermore? A. Yes.

Q. And who is now a Director of the Pacific Gas and Electric Company?

A. That is correct; yes.

Q. In the latter days of the Sacramento Electric, Gas & Railway Company Mr. Norman Livermore, who is now a Director of the Pacific Gas and Electric Company, was active in its affairs, was he not?

A. Yes, he was.

The Pacific Gas and Electric Company was organized during the latter part of 1905 and acquired control of the California Gas & Electric Corporation and the San Francisco Gas & Electric Company. That is shown very clearly on the map, or drawing.

The Examiner: Indicated by the cross hatching as controlled through stock ownership? [26]

The Witness: Yes, until later on, and the properties were taken over and the companies dissolved

(Testimony of P. M. Downing.)

During the period from 1910 to 1930 the Pacific Gas and Electric Company acquired the properties of a large number of other companies including, in 1911, the Mutual Electric Light Company, supplying electric service in a limited area in San Francisco; the Metropolitan Gas Corporation, supplying gas in a limited area in San Francisco; and, in 1917, the Oro Electric Corporation, supplying electric service in Butte County, Oroville and vicinity, San Joaquin County, and a small area in the vicinity of Stockton. That same company supplied gas service in Oroville and water service in Oroville and vicinity.

In 1919 the Pacific Gas and Electric Company took over the Northern California Power Company, supplying electric service in Shasta, Tehama, Glenn, Colusa and Butte Counties; and it also supplied gas service in Redding, Red Bluff and Willows, and water service in Redding and Willows.

In 1923 the California Telephone & Light Company was taken over by the Pacific Gas and Electric Company. That company supplied electric service in Mendocino, Lake, Sonoma, and Napa Counties; and telephone service in a number of towns in those counties, among which are Sonoma, Healdsburg, Lakeport, Guerneville, Middletown, Potter Valley, and certain rural areas in the vicinity of Cloverdale, Lakeport, Santa [27] Rosa and Sebastapool.

The Examiner: This company, according to this chart, Exhibit No. 3, was only acquired through stock ownership in the year 1923?

(Testimony of P. M. Downing.)

The Witness: That is correct. Later the properties were taken over by the Pacific Gas and Electric Company and the company was dissolved.

The Examiner: These other acquisitions that you have previously described were all taken over on the dates indicated, rather than through stock ownership, according to this chart?

The Witness: The chart, so far as we know, is correct. Some of those companies were taken over, the physical properties were taken over; others were acquired through stock ownership.

The Examiner: The California Telephone & Light is the first of those that you have named since 1910 which was acquired otherwise than by taking over the properties, if this chart is correct?

The Witness: Yes. To the best of our knowledge and belief the chart is correct.

The Examiner: Go ahead.

A. (continuing) In 1927 the Pacific Gas and Electric Company took over the Coast Valleys Gas & Electric Company, supplying electric service in Salinas, Monterey, Pacific Grove, [28] and elsewhere in Monterey County, and in portions of Santa Clara, San Benito Counties. It also supplied gas service in Salinas and Monterey, and water service in Salinas and King City.

It also took over during that same year, 1927, the Western States Gas & Electric Company, supplying electric service in San Joaquin, Sacramento, El

(Testimony of P. M. Downing.)

Dorado, Contra Costa, Calaveras, Humboldt and Trinity Counties and gas service in Stockton. It also took over Sierra and San Francisco Power Company supplying electric service in Calaveras, Contra Costa, Monterey, San Francisco, San Joaquin, Stanislaus and Tuolumne Counties. It also supplied water service in Sonora and Jamestown and a number of other smaller communities in the vicinity of those two towns.

In a majority of these consolidations the absorbed companies were acquired by the exchange of stock of Pacific Gas and Electric Company for the stock of the absorbed companies. In some cases, however, their control was acquired by the purchase of the stock of the companies taken over. [29]

By Mr. Phleger:

Q. Mr. Downing, in the cases where Pacific Gas and Electric Company has first acquired the stock and has later taken over the physical properties, has Pacific Gas and Electric Company operated those subsidiary companies in the meantime?

A. Yes.

Q. And did they in each case with the acquisition of the stock control become integral parts of the Pacific Gas and Electric system?

A. Yes sir; in so far as the physical operations are concerned, why, those absorbed properties were operated in exactly the same way and in conjunction with the properties of Pacific Gas and Electric Company.

(Testimony of P. M. Downing.)

Q. And is it fair to say that when properties have been acquired they have been acquired in either of two ways: One, directly through the acquisition of the physical properties or, two, through the acquisition first of the stock, the operation of the company whose stock was acquired, and later the absorption of the physical properties into the Pacific Gas and Electric Company?

A. That I think is a correct statement, yes.

Q. And in that process over these periods of years approximately 400 companies have been so acquired, their assets taken over, so that there is now but a single company? [30]

A. That is correct.

Q. Now, with respect to Applicant's Exhibit 3 that you have been referring to in your testimony, was that chart prepared in the offices of the Pacific Gas and Electric Company? A. Yes sir.

Q. From data in the records of the Pacific Gas and Electric Company? A. Yes sir.

Q. And are the facts and data shown upon it true and correct?

A. To the best of our knowledge and belief they are correct.

Q. It has been used by the company, has it not, in its own business as being accurate and correct?

A. Yes sir.

Q. Now, you have described the properties of the Pacific Gas and Electric Company and their

(Testimony of P. M. Downing.)

growth. Will you describe briefly the men who are instrumental in the building up of this property?

A. The men who started what is today Pacific Gas and Electric Company were John Martin and E. J. DeSabla. I have already stated that Mr. Martin had been engaged in various lines of business here in San Francisco until he took over the agency of Stanley Electric Manufacturing Company [31] and became interested in the development of hydro power.

Mr. DeSabla—Mr. DeSabla's father was a coffee importer here in San Francisco. After his death Mr. DeSabla took over his father's business and later became interested in mining in Nevada County and he and John Martin were the two men who conceived the idea of developing these water power resources and also of consolidating these different companies which I have mentioned into one large operating organization. They were the moving spirits in the organization up until the formation of Pacific Gas and Electric Company during the latter part of 1905. That was the date on which Pacific Gas and Electric Company was organized.

Mr. Frank Drum then became president of the company. Mr. Drum was a California man, lived the greater part of his life in the Bay area, in Oakland and San Francisco. He was not only a large stockholder himself, but he also represented interests which were heavily interested in Pacific Gas and Electric Securities.

(Testimony of P. M. Downing.)

Q. Were these interests that Mr. Drum represented California interests?

A. Yes; yes, they were all California interests.

Q. Do you recall Mr. John A. Britton?

A. John A. Britton spent the greater part of his life with the Oakland Gas Light & Heat Company. When the California Gas & Electric Corporation was formed he became [32] president of California Gas & Electric Corporation and when Pacific Gas and Electric Company was formed he became vice-president and general manager of Pacific Gas and Electric Company.

Q. Do you recall how long he continued with Pacific Gas and Electric Company?

A. He continued as vice-president and general manager up until the time of his death which, as I recall, was in 1923.

Q. Were Martin and DeSabla active in the affairs of the Pacific Gas and Electric Company after it was organized?

A. For a time, yes, but Mr. Drum was president. They, however, were active for several years after Pacific Gas was organized. Due to failing health Mr. Drum retired from the presidency of Pacific Gas in 1920 and was succeeded by Mr. W. E. Creed. Mr. Creed was also a Californian. When he was elected president of Pacific Gas and Electric Company he was president of the East Bay Water Company and represented a number of utilities as their attorney in different matters.

(Testimony of P. M. Downing.)

Mr. Creed continued as president until 1927 when he died and was succeeded by Mr. A. F. Hockenbeamer. Mr. Hockenbeamer had spent the early years of his life with different steam railroads in the East, but in 1907 when N. W. Halsey [33] and Company were considering the handling of some financing for Pacific Gas and Electric Company he was sent out to California by N. W. Halsey and Company to investigate and report to his principals, N. W. Halsey and Company, on the financial standing and so on of Pacific Gas and Electric Company. After he completed that assignment he was invited by Mr. Drum, then president of the company, to become associated with Pacific Gas and Electric Company, and he was made vice-president and comptroller of the company. He continued in that capacity until Mr. Creed's death in 1927 when he became president of the company and remained president until his death in 1935.

Q. When Mr. Hockenbeamer became associated with the Pacific Gas and Electric Company did he disassociate himself from his eastern connections?

A. Entirely so, yes.

Q. And during the period commencing in 1907 when he joined the P. G. and E. his sole activity was with the P. G. and E., was it not?

A. He devoted his entire time and attention to Pacific Gas and Electric Company affairs.

Q. He had no outside business interests, did he?

(Testimony of P. M. Downing.)

A. None whatever.

Q. No connection with any other corporation?

A. No. [34]

The Examiner: A short recess at this time, Mr. Phleger?

Mr. Phleger: Yes sir.

(At this time a short recess was taken after which proceedings were resumed as follows:)

The Examiner: Before we resume the examination I should like to ask if there is any member of the public who desires to make any statement. I neglected to do that at the opening of the hearing this morning, but one of the reasons for conducting this hearing here in San Francisco is that if there is any member of the public who desires to make any statement for this record for the consideration of this Commission I would be glad to have them do it.

I may renew this announcement at various sessions in the event I see anyone present who is not a participant in this proceeding.

This gentleman back here, do you want to make any statement for this record, or are you just an interested listener?

Mr. Adolph Kessler: I am a Pacific Gas and Electric stockholder; maybe later on; I don't know; I just came in.

The Examiner: All right, that is fine.

(Testimony of P. M. Downing.)

Mr. Phleger?

Mr. Phleger: I will offer in evidence as Pacific Gas and Electric Company's Exhibit 4 a map marked Electric Power Stations and Transmissions Systems in California compiled by [35] Pacific Gas and Electric Company, 1928.

The Examiner: Any objection to this, Miss Calkin? You have seen this map?

Miss Calkin: No, no objection.

The Examiner: It will be received in evidence and marked Applicant's Exhibit 4.

(The map referred to above was marked Applicant's Exhibit No. 4 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Downing, will you describe the map which has just been offered in evidence?

By the way, has it been admitted?

The Examiner: Yes, as Applicant's No. 4 without objection.

A. This map is intended to show the various stations and transmission systems in California in 1928. Starting at the top of the map you will notice some lines crossing the California-Oregon state line and extending south into California some distance where they join the red lines. Those are lines of the California-Oregon Power Company, an interstate company operating in California and Oregon. The red lines indicate the major transmission

(Testimony of P. M. Downing.)

lines of Pacific Gas and Electric Company as they existed as of the date of this map, 1928.

The purple lines extending from the northeastern part [36] of the state there near the figures 44 on down through Sacramento and into Oakland represent the main transmission lines of the Great Western Power Company.

The green lines a little further south represent the lines of the San Joaquin Light & Power Corporation.

The purple lines starting about the middle of the map just west of Bishop and extending down into Los Angeles are the major transmission lines of the Southern California Edison Company.

The yellow lines on the right hand side of the map starting near Mono Lake and coming down represent the lines of the Nevada-California Power Company.

In the vicinity of Lake Tahoe you will see some purple lines. Those are the lines of—they are shown here as the Truckee River Power Company. It is now known as the Sierra Pacific Power Company. That is an interstate company operating in both California and Nevada.

The Examiner: These yellow lines that you just spoke about are shown in the legend in the upper right as Southern Sierras Power Company. You gave some other name. What was that?

The Witness: It was at that time known as

(Testimony of P. M. Downing.)

Southern Sierras Power Company. It is now known as Nevada-California Power Company.

By Mr. Phleger: [37]

Q. Mr. Downing, was the original of this map prepared by the Pacific Gas and Electric Company?

A. Yes.

Q. And are all of the facts and figures given upon it true and correct? A. Yes sir.

Q. The legends which appear on it in various colors and so forth, they also are correct; are they not? A. Yes sir.

Q. Now, will you describe the competitive condition which existed at the time this map was made between the Great Western Power Company, the San Joaquin Light & Power Company and the Pacific Gas and Electric Company.

A. Just prior to the taking over of the Great Western Power Company and San Joaquin Light & Power Corporation a highly competitive situation existed in certain parts of the territory in the northern part of the state.

Approximately 90 percent of the business of the Great Western Power Company was in territory where that company was in competition with Pacific Gas and Electric Company.

The Great Western Power Company completed the construction of its Las Plumas plant on the Feather River during the latter part of 1908. At that time Pacific Gas and Electric Company needed

(Testimony of P. M. Downing.)

power and it purchased a substantial amount of [38] power from the Great Western Power Company. In fact, for a time Pacific Gas and Electric was the Great Western's largest customer. Pacific, however, could not absorb the entire output of the Great Western's plant so the Western started competition with Pacific Gas and Electric.

At that time there was no state law requiring utilities to first obtain certificates of convenience and necessity before undertaking to give service in a given community. On the contrary, any person, firm or corporation had a constitutional right to the free and unrestricted use of streets of any incorporated city or town for the erection of poles, wires, and other facilities necessary to give electric service.

By taking advantage of these broad constitutional rights and by acquiring a number of small distribution systems in various places there soon developed a highly competitive situation between the two companies. They were paralleling lines, duplicating facilities, each resorting to every means at its disposal to not only obtain new business, but also to take from the other company the business it was already serving.

Some of the more important areas in which competition existed were San Francisco, Oakland, Emeryville, Sacramento, Napa, Santa Rosa, Petaluma, Martinez and Pittsburg.

Q. Have you any approximate figure of the amount of the Great Western Company's business

(Testimony of P. M. Downing.)

which was derived from [39] territory which was also occupied by the Pacific Gas and Electric Company?

A. Approximately 90 per cent of the gross revenue of Great Western Power Company came from territory in which that Company was in competition with Pacific Gas and Electric Company.

Q. Now, these conditions which you have just described existed, did they not, up until the time of the acquisition by the Pacific Gas and Electric Company of the stocks of the Great Western Power Company and the San Joaquin Light & Power Company in 1930? A. Yes sir.

Q. Will you state the reasons actuating the Pacific Gas and Electric Company in its desire to acquire the Great Western?

A. Well, under the competitive conditions which existed at that time inefficiency was inevitable. Two systems were being maintained to give service which one could very readily supply. Obviously such a situation was an unhealthy one and was so recognized by the two companies and also by the general public.

In the application to the Railroad Commission for authority to make the consolidation it was pointed out that the consolidation would make possible:

1. The control, administration and operation of the [40] properties and business by a single managerial organization and operating personnel with

(Testimony of P. M. Downing.)

resulting economies through elimination of unnecessary duplication.

2. Interconnection with Pacific Gas and Electric Company's system with unified control which will make better and more efficient use of plants and transmission systems resulting in reduced costs and greater assurance of uninterrupted service to all customers.

3. The more comprehensive and effective development of resources and thereby make substantial savings in capital expenditures.

4. The obtaining of money for capital expenditures at also lower costs.

Q. Why the latter?

A. Because the competitive element had been eliminated and by the consolidation the securities of the one company had a better standing in the financial world than the two companies would have if operated independently.

Q. And is it not a fact that the credit standing of the Pacific Gas and Electric Company at that time was actually better than that of the Great Western Company?

A. Yes, I think that it was. In this same application to the Railroad Commission it was estimated that the savings in the operation of the properties would be between one million and a million and a half dollars per year; those were [41] the operating savings. It was also estimated that further savings

(Testimony of P. M. Downing.)

could be effected by retiring outstanding securities of acquired companies and by doing away with duplicate construction expenditures in the future. Subsequent results have shown that the saving in operating expenses was approximately $1,275,000 per year, and in fixed charges and preferred dividends approximately $950,000 per year.

It was also found that by combining the operations of the different systems and by taking advantage of low diversification, 35,000 kilowatts of generating capacity idle under separate operation, could be put to beneficial use under combined operations.

Q. Mr. Downing, an application was filed by the Pacific Gas and Electric Company in due course, was it not, to purchase from North American Company and its subsidiaries the stocks of Great Western Power Company and San Joaquin Light & Power Company? A. Yes sir.

Q. And a hearing was held on that application?

A. Before the Railroad Commission, yes.

Q. Did you appear and testify at that hearing?

A. Yes, I think that I did.

Q. And in substance as you have testified now with respect to the economies and benefits to the public from the consolidation? [42]

A. Yes sir.

Mr. Phleger: I will offer in evidence as Applicant's Exhibit 5 certified copy of Decision No. 22432 of the Railroad Commission of the State of California, dated San Francisco, California, May 14,

(Testimony of P. M. Downing.)

1930, authorizing the granting of permission and authority to the Pacific Gas and Electric Company to purchase shares of the preferred capital stocks and common capital stocks of the Great Western Power Company of California, San Joaquin Light & Power Corporation, and Midland Counties Public Service Corporation under the terms and conditions of an agreement between Pacific Gas and Electric Company and the North American Company filed with the Commission, which agreement is dated March 29, 1930.

The Examiner: Have you seen this, Miss Calkin?

Miss Calkin: Yes; no objection.

The Examiner: It is an instrument consisting of 17 pages. Received in evidence and marked Applicant's Exhibit 5.

(The 17 page document referred to above was marked Applicant's Exhibit No. 5 and was received in evidence.)

Mr. Phleger: I will also offer in evidence at this time as Applicant's Exhibit 6 a copy of the Agreement dated March 29, 1930 between the North American Company and Pacific Gas and Electric Company, which is the Agreement [43] mentioned in the order of the Railroad Commission just introduced in evidence. Attached to the Agreement are accompanying letters between the Pacific Gas and Electric Company and the North American Company and Great Western Power Company relating to provisions in the Agreement.

(Testimony of P. M. Downing.)

Miss Calkin: I have no objection to Applicant's Exhibit No. 6.

The Examiner: Received in evidence and marked No. 6.

(The Copy of Agreement referred to above was marked Applicant's Exhibit No. 6 and was received in evidence.)

By Mr. Phleger:

Q. Now, Mr. Downing, will you refer to the map which has been introduced in evidence and marked Applicant's Exhibit 4, I believe. In your testimony, and according to the legend, the properties of San Joaquin Light & Power Company are shown in green. Do those properties as shown on this map include the properties of the Midland Counties Public Service Corporation? A. Yes sir.

Q. Will you explain what the properties of the Midland Counties Public Service Corporation were and where they were located?

A. They were along the coast starting with about San Luis Obispo and running as far south as, well, in the vicinity [44] of Lompoc.

Q. Were the properties of the Midland Company operated in close association with those of the San Joaquin Company? A. Yes sir.

Q. They were owned by substantially the same interests? A. The same interests, yes.

Q. And was it for that reason that the Midland properties were shown in the same color and as part

(Testimony of P. M. Downing.)

of the properties of the San Joaquin Company on this map?

A. Yes sir.

Q. Will you now proceed, Mr. Downing, to explain, or rather, describe various attempts by the Pacific Gas and Electric Company to acquire control of or ownership of the properties of the Great Western Company?

A. Well, the consolidation of Pacific Gas and Great Western had been discussed at various times ever since the Great Western Company was organized back in about 1906. As evidence of this we have in our files a copy of a memorandum dated New York, October 20, 1910, relative to a proposed lease by Pacific of the Great Western Company and its associated company, California Electric Generating Company.

By way of explanation I might say that the California Electric Generating Company owned a steam electric generating plant in the City of Oakland and it was operated in conjunction with the Great Western Company. [45]

This memorandum is initialed "A. C. B." meaning A. C. Bedford, then a director of the Great Western Power Company and California Electric Generating Company, and "F. G. D.", Frank G. Drum, president of Pacific Gas and Electric Company.

The files also contained a copy of a document entitled "Pacific Gas and Electric Company, Great

(Testimony of P. M. Downing.)

Western Power Company and subsidiary corporations, outlined plan of proposed reorganization, October 11, 1911".

The files also contain numerous reports and correspondence bearing on the subject of consolidation. Nothing came out of the above referred to negotiations until after Mr. Creed's election to the presidency of Pacific Gas in 1920 when negotiations for the acquisition of the Great Western Company were again undertaken.

Late in 1922 an agreement was reached under which the Pacific Company was to offer its preferred and common stock in exchange for the preferred and common stock of Western Power Corporation. This latter company, Western Power Corporation, was a New York holding company owning, as substantially its only assets, all of the $27,500,000 par value of the common stock of the operating company, Great Western Power Company of California.

For some reason, however, this agreement was never consummated.

In 1925 Western Power Corporation acquired control of [46] the San Joaquin Light & Power Corporation and Midland Counties Public Service Corporation. During that same year control of Western Power Corporation was acquired by the North American Company.

Following the death of Mr. Creed in 1927 and the election of Mr. Hockenbeamer to the presidency of

(Testimony of P. M. Downing.)

the company further studies were made from time to time looking to the possible acquisition from the North American of control of Western Power Company's California subsidiaries.

Negotiations with this end in view were actively undertaken in 1929 and consummated during the early part of 1930 when Mr. Hockenbeamer went to New York and finally reached an agreement with the representatives of the North American Company under which Pacific acquired control of Great Western Power Company, San Joaquin Light & Power Corporation and Midland Counties Public Service Corporation.

Q. That is the transaction which was the subject matter of the order of the Commission which has just been introduced in evidence, is it not?

A. Yes.

Q. And is covered by the agreement also introduced in evidence? A. Yes sir.

Q. Immediately following acquisition of the control, or of the majority stock of those three companies by Pacific [47] Gas and Electric Company, was there any incorporation of those companies in the operations of the Pacific Gas and Electric Company?

A. Yes; the operations of those properties were almost immediately consolidated with the operations of Pacific Gas and Electric Company. The duplicate organizations which had, during the com-

(Testimony of P. M. Downing.)

petitive period, been built up in these various places were eliminated and the operations of the two companies were unified under a single management and control.

Q. And what was that management and control?

A. Pacific Gas and Electric Company management control.

Q. Who, and I mean what individual, worked at the details of incorporating into the Pacific Gas and Electric system the business and personnel of the acquired companies?

A. In so far as the physical or operating end of the properties is concerned I think, perhaps, I had as much to do with it as anyone.

Q. Isn't it a fact that you personally laid out the organization and made all of those decisions?

A. Yes.

Q. In making those decisions were you given any instructions or suggestions by the North American Company or [48] by anyone associated with the acquired companies? A. None whatever.

Q. Were your decisions in connection with that matter your own decisions solely from the standpoint of the Pacific Gas and Electric Company?

A. Yes.

Q. Were there any commitments that you know of in connection with the acquisition of these properties having to do with personnel of any of the acquired companies? A. None whatever.

(Testimony of P. M. Downing.)

Q. You were perfectly free to lay out the manner of acquisition and incorporation of these properties according to what you thought were the best interests of the Pacific Gas and Electric Company, were you? A. Yes.

Q. Now, you have stated at some length the physical situation with respect to the Great Western. Will you now describe briefly the physical situation in connection with the San Joaquin Light & Power Company?

A. The San Joaquin Light & Power Corporation was not in competition with Pacific Gas & Electric Company. Their operations were further south and covered the southern part of the San Joaquin Valley. A part of their power supply, however, was obtained from the north. Prior to the consolidation it came from the Great Western Power system. After the [49] consolidation and the tying in of Pacific and Great Western that power supply to San Joaquin was continued, part of the power coming from what was formerly the Great Western system and a part of it from what was formerly Pacific Gas system.

Q. Were the systems of the Pacific Gas and Electric and the San Joaquin complementary, that is to say, were they physically—did they physically lie in adjoining territories?

A. They were contiguous, yes.

Q. Contiguous territories, but did not duplicate their service or facilities? A. No.

(Testimony of P. M. Downing.)

Q. When was it that the Pacific Gas and Electric Company introduced natural gas into San Francisco? A. That was in 1929 and '30.

Q. And where does that gas come from?

A. The greater part of it comes from the San Joaquin Valley fields. The Kettleman field is the largest field from which we obtain gas, although there are a number of other fields in the San Joaquin Valley from which we obtain supplies. Those fields were 200 to 210 miles south of San Francisco. We also get some gas from fields farther north. The largest here in the north is at Rio Vista. We get some from McDonald Island, some from Tracy, and a small amount from the Marysville Buttes.

Q. Now, those places of gas supply were mainly in [50] territory occupied by the San Joaquin Power & Light Company, were they not?

A. Yes.

Q. And did the Pacific Gas and Electric Company, prior to acquiring the San Joaquin Light & Power Company, serve with gas any part of the territory which the San Joaquin Light & Power Company was then serving with electric energy?

A. Yes, in the City of Fresno. Pacific Gas and Electric owned the gas distribution system there prior to the consolidation.

Q. So that with respect to gas you were already in the territory occupied by San Joaquin Light & Power Company and your source of natural gas for

(Testimony of P. M. Downing.)

the major part of all of your properties also came from that territory?

A. That is correct.

Q. And I understand also from your testimony at the time of the acquisition of these various properties by the Pacific Gas and Electric Company the controlling interest in San Joaquin and Midland were all held by the North American Company?

A. That is my understanding, yes.

Mr. Phleger: Do you want to adjourn now?

The Examiner: If you have come to a convenient point.

Mr. Phleger: Yes. [51]

The Examiner: We will recess until two o'clock.

(Whereupon at 12:00 Noon a recess was taken to 2:00 p. m. of the same day.) [52]

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p. m.)

The Examiner: We will resume the hearing.

Whereupon—

P. M. DOWNING

produced as a witness for and on behalf of the Applicant, having been previously duly sworn, testified further as follows:

Direct Examination (Resumed)

Mr. Phleger: Will you read the last question and answer, Mr. Reporter?

(The question and answer referred to were read by the reporter as above recorded.)

(Testimony of P. M. Downing.)

Mr. Phleger: I now offer in evidence a map entitled "High Voltage Electric Transmission System and Natural Gas Pipe Lines of Pacific Gas and Electric Company in Northern and Central California as of December 31, 1939."

The Examiner: Without objection this will be received in evidence and marked Applicant's Exhibit No. 7.

(The map above referred to was marked Applicant's Exhibit No. 7 and received in evidence.)

Mr. Phleger: I might state that this exhibit was produced in response to a request by the Securities and Exchange Commission and from time to time later such exhibits as we have prepared and produced in response to their request will be so designated. [53]

This has been marked as Exhibit No. 7?

The Examiner: That is correct.

By Mr. Phleger:

Q. Mr. Downing, referring to Exhibit No. 7, was this map prepared by the company under your direction? A. Yes.

Q. And is all of the data shown on it true and correct? A. Yes.

Q. Will you now describe generally the Pacific Gas and Electric system as it exists at this time?

A. The Pacific Gas and Electric system as it stands today gives electric service in 46 of the 58 counties in California.

(Testimony of P. M. Downing.)

This map, you will note from the legend in the upper right hand corner, shows the electric generating stations, gas generating stations, the high voltage transmission lines, the high pressure gas lines, the steam plants, the water systems, and the street railway system operated by the company.

The red lines represent the high voltage electric transmission lines.

The rectangular red markings represent the hydro-electric power houses.

The green lines represent the high pressure natural gas lines which, you will note, run from the southern part of the San Joaquin Valley in a general northerly direction to supply [54] the metropolitan centers in the San Francisco Bay area.

All of these lines are inter-connected. All the power houses, whether hydro, steam, or power obtained from outside agencies, feed right into this common network of lines. In other words, the whole system is operated as a unit, both insofar as the electric operations are concerned and also insofar as the gas operations are concerned.

Q. Will you now, Mr. Downing, give generally the statistics with respect to the territory served, the extent of distribution lines, and so forth?

A. The company as it stands today furnishes electric service in 46 of the 58 counties in California, an area embracing between 85,000 and 90,000 square miles. That is all contiguous terri-

(Testimony of P. M. Downing.)

tory. In other words, it is not split up into isolated units.

The company owns and operates 47 hydro-electric generating stations, having an aggregate installed capacity of 1,143,688 horsepower.

We lease and operate two hydro-electric stations having a combined installed capacity of 33,512 horsepower.

We have nine steam plants having an aggregate installed capacity of 575,905 horsepower.

In addition to the above sources of power supply we purchase power from nine outside supplying agencies. From eight of these delivery is on an outright purchase and sale basis. [55] The ninth, the Hetch Hetchy power of the City and County of San Francisco, is on a consignment basis.

The company owns and operates 6,138 miles of transmission lines operating at about from 60,000 to 220,000 volts.

From 485 sub-stations, operating at voltages from 220,000 to 11,000, 33,306 miles of distribution lines furnish service to 909,155 electric customers.

Those figures are as of June 30, 1940.

Electric service is furnished to 137 incorporated cities and towns and to 235 unincorporated communities, having an estimated population of 250 or over.

Customers in most of these cities and communities are served directly by the company, although resale power is sold at wholesale to a number of outside distributing agencies.

(Testimony of P. M. Downing.)

Q. What can you say, Mr. Downing, with respect to the rural territory served by the company?

A. You will note from Exhibit 7 that practically all of our hydro-electric plants are located in the foothills, or in the Sierra Nevada Mountains on the eastern side of the State. The general direction of power transmission is south or southwest. Those lines running in those directions, in that direction, from the foothills to the Bay area, which is our heavy load center, cross the interior valleys, Sacramento and San Joaquin, and the existence of those lines in those valleys has made power available for rural uses. [56]

The company has long recognized the importance of agriculture in the economic scheme of California and the vital part electricity plays in the success of that industry, and we have offered attractive inducements to build up our rural electric load.

That our efforts have been fairly successful is evidenced by the fact that of the 73,000 farmers, either on or within reasonable distance of our lines, more than 70,000, or approximately 96 percent of the total number, now have electric service.

Over 35,000 of the 70,000 rural electric customers use power for irrigation pumping. The total connected irrigation pumping load is in excess of one-half million horsepower.

There now remains only a comparatively few rural communities in which electric service is not available.

(Testimony of P. M. Downing.)

Under the company's liberal line extension policy, and with the advent of new appliances and the resulting increase in customer usage, lines are continually being built to the few remaining unserved areas and service is being established.

The Examiner: That refers, I presume, to those counties in which you have your lines?

The Witness: Yes. We cover practically the entire north central part of the State wherever there is any business to be had.

With the advent of new appliances and the resulting in- [57] crease in usage of power we are continually extending lines into sparsely settled areas which have heretofore not been served.

By Mr. Phleger:

Q. And it is a fact that many sparsely settled areas are served by the company that it would be uneconomic for any agency to serve because of the fact, as you have explained, that your transmission lines cross long distances from the mountains southward and westward toward the heavily populated areas? A. That is correct; yes.

Q. Mr. Gerdes suggests that you got some sort of a prize recently in connection with the rural service.

A. Yes. There is a prize offered each year by the Edison Electric Institute to the company that has done the most in the way of extending service into the rural areas. The prize for having accomplished more along those lines than any other com-

(Testimony of P. M. Downing.)

pany in the country was awarded to the Pacific Gas and Electric Company at the last meeting of the Edison Institute in June.

Q. June of 1940?

A. June of 1940; yes, sir.

Q. Will you describe, by reference to Exhibit 7, the territory served and the distribution system of your gas service?

A. As I stated a moment ago, the green lines on Exhibit [58] 7 represent the high pressure gas transmission lines extending from the southern part of the San Joaquin Valley in a general northwesterly direction to the San Francisco Bay area.

The Pacific Gas and Electric Company is not in the business of producing gas. All of the gas which we distribute is purchased from oil companies.

There has been more development in the way of oil and gas in the San Joaquin Valley than there has been further north.

The westerly gas line, as shown on the map, is owned 100 percent by the Pacific Gas and Electric Company.

The easterly line, as shown on the map, is owned by Stan-Pac-Co.

The Reporter: The name, again, please?

Mr. Bosley: The Standard-Pacific Gas Lines, Inc., isn't it?

The Witness: Yes—as appears in the legend on this exhibit.

That is owned 50 percent by Pacific Gas and Elec-

tric Company and 50 percent by the subsidiaries of the Standard Oil Company, and we have a 50 percent interest in the capacity of that line.

Our heavy gas load is obviously in the Bay area. We transport that gas from the oil fields to the Bay area, starting at 500 pounds per square inch. The pressure drops as it [59] gets farther away from the wells; but service can be and is given from those lines wherever there is a demand for it.

There is another independent system that is supplied from an independent source up in the extreme north, supplying Marysville, Chico and Oroville. That gas comes from some wells in the Buttes. There is no connection at present between those wells and the wells in the San Joaquin Valley. That is operated as an independent system, although there is a connection there of about 11 or 12 miles which could be made to tie them together.

A good part of the gas from the San Joaquin Valley is wet gas, that is, it carries in suspension a certain amount of gasoline vapors. The oil companies recover that gasoline by putting the gas through absorption plants. They deliver the gas from those absorption plants to us at about 350 pounds pressure. That is compressed up to 500 pounds pressure at the Kettleman compressor station, which you will note on the lower part of the map.

All of these lines are tied together and form an integrated unit comparable in many respects to the

(Testimony of P. M. Downing.)

electric system which, as I have already stated, is tied together and operated as a single unit supplying the entire area that we serve.

By Mr. Phleger:

Q. Mr. Downing, what can you say with respect to the quality and character of the gas now supplied by the company [60] as compared with the manufactured gas supplied by it prior to 1929?

A. The natural gas has heat unit values ranging from about 1150 to 1175 down to about 925, depending upon what field the gas comes from.

The Kettleman gas runs about 1150 to 1175. Some of the smaller fields farther north have lower heat unit gas.

The manufactured gas which we formerly served had heat unit values of 550 to 575 B.T.U.'s. That is about as high heat unit gas as can be manufactured from the processes used here in this State where we make all of our manufactured gas from oil. We have no coal here and make no coal gas.

Q. What percentage of your gas customers are supplied with natural gas?

A. Perhaps 96 or 98 percent of all of our customers.

Q. What can be said generally as to whether your electric customers are also gas customers if they live in areas which are supplied by both?

A. Either service is available to the customers. Under our present organization setup we don't have separate salesmen for those two services. One sales-

(Testimony of P. M. Downing.)

man will go to a prospect and tell that prospect what can be done with gas, and he will also tell him what can be done with electricity. The selection of the service is made by the prospect.

Q. Is it not a fact that a large proportion of your [61] gas customers are also electric users?

A. Yes; it is safe to say that almost all of them are, a very large percentage. Gas is used very largely for heating because it has high heat units and our gas rates are very reasonable, and it is somewhat cheaper for customers to use gas for cooking and heating purposes than to use electricity.

Q. With respect to those areas which are not tied in with your general gas distribution system, how is that gas manufactured?

A. We have a few plants where we still manufacture gas. Those are in communities somewhat removed from our main gas lines and where the cost of extending the gas system to substitute natural for manufactured gas will not be justified by the volume of business to be had.

Q. Will you describe now the operations of the Pacific Gas and Electric Company in other than its electric and gas fields? For instance, your water service.

A. Yes. We supply water in a number of different places, particularly in Placer County, where the stored water, which supplements the natural flow of the streams, after passing through the dif-

(Testimony of P. M. Downing.)

ferent hydro-electric generating stations, is available for our water distribution systems in the lower areas.

We supply domestic water to a large number of communities, and we supply irrigation water in several different communities. [62]

Our largest irrigation supply system is in Placer County. We also supply some water, irrigation water, in Tuolumne County, some in Amador County and some in Butte County.

We operate a street railroad system in Sacramento. That is the only railroad system we have.

We supply steam heat in parts of San Francisco and in parts of Oakland.

Q. Do you perform any of these services that you have just mentioned in any territory other than that in which you perform electric or gas service?

A. No, no. All of our water is supplied in territory in which we serve electricity.

Q. So that all of the services given by the company are comprehended and included in the general territory that you have heretofore described as being covered by your electric and gas transmission and distribution lines, is that correct?

A. That is correct.

Q. Will you—you touched on it before—but will you go into perhaps greater detail of the question as to the properties of the company forming an integrated regional system?

(Testimony of P. M. Downing.)

A. The territory served by the company, as I have said, embraces a large number of counties in the north central part of the State. Those counties, that territory is completely covered with electric lines wherever there is any [63] demand for service.

We cover the larger cities and communities with gas.

Inter-connection of the entire system I have already referred to.

All of the power from whatever source is delivered into an inter-connected network of lines. The control operation and regulation of the entire electric system and the control operation and regulation of the gas system is handled through dispatching offices.

Our electric dispatching office is in Oakland. There we have dispatchers always on duty who direct the operations of the entire system. The authority of the load dispatcher, insofar as the giving of service is concerned, is supreme. No one, particularly in an emergency, would ever question the authority or the instructions given by the load dispatcher's office. In other words, the whole electric system is operated as a unit under the direct and immediate supervision of the load dispatcher's office. He is in direct communication with all of the power houses and all of the important switching and sub-stations over the entire territory. Authority must be had from the load dispatcher before any power house can be taken out of service, before any

(Testimony of P. M. Downing.)

line can be taken out of service, and before any change can be made in the load being carried by a given power house.

Q. So that one man in Oakland at any particular time [64] has full and complete control of more than one million and a half horsepower of generating capacity, and the flow of electricity through every mile of your entire system?

A. That is correct.

Q. Now, other large companies, Mr. Downing, pursue a different system, do they not, that is, of unified, not unified control, but a separated control?

A. Some companies operate their systems in separate units. We cover a very large area. We serve a very large area, perhaps a larger area than any other company in the country, and I think that our operations differ somewhat from those of other companies in that we operate everything as a unit over the entire territory.

That is true not only of our electric system, but it is also true of our gas system.

We have a gas dispatcher whose authority, with respect to the handling of our gas transmission system, is supreme. He determines what particular wells gas shall be taken from; he designates what lines shall be used, and he has complete control over the entire gas transmission system.

The Examiner: You stated, I believe, that the company does not own any producing wells?

The Witness: That is right.

(Testimony of P. M. Downing.)

The Examiner: That is, gas wells?

The Witness: No. We buy all of our gas. [65]

The Examiner: You have your transmission pipe lines run right to the wells from which you purchase the gas?

The Witness: We generally install the gathering lines, run them right to the wells, and the producing companies deliver to us at the wells.

The Examiner: It is the introduction of the gas to those gathering lines that you have just described that your gas dispatching office has control over?

The Witness: That is it. We take gas from perhaps hundreds of different wells and the producing companies have their royalty arrangements with the owners of the property, and we have to cooperate very closely with the producers in seeing that the right amount of gas is taken from the various wells.

By Mr. Phleger:

Q. Mr. Downing, you have long term contracts, have you not, with most of the owners of the producing wells?

A. Yes. Most of them run, that is, many of them run for the life of the field; others are for different periods of time, but generally we make them as long as we reasonably can.

Q. So that the building by you of these transmission lines and gathering lines into fields are protected by contracts generally for the life of the field? A. Yes. [66]

Q. Now, for the purposes of contrast, so we may

(Testimony of P. M. Downing.)

be absolutely accurate, I think you testified that the company did not own any gas wells. I direct your attention to the small subsidiary by the name of the Arlington Properties Company. Will you state what that company is?

A. It is a small subsidiary of the Pacific Gas and Electric Company. It does own, oh, one, two, or three wells down in the San Joaquin Valley.

Q. It is not a public utility, is it?

A. No, not a public utility.

Q. And the gas it produces is inconsequential as compared with the amount of gas purchased by the company? A. Almost negligible.

Q. Now, will you describe briefly the territorial extent of the company, that is, with respect to whether or not it constitutes an economic or geographic unit?

A. Yes, I think it does. It extends from Siskiyou County on the north down to and including Kern County on the south. Included in that area are the two large interior valleys, Sacramento and San Joaquin, which are really just one valley.

We supply power in the foothills of the Sierra for mining and other purposes, and we supply domestic and commercial lighting and industrial power in the more thickly settled areas. [67]

The territory is an economic unit, you might say. There are no isolated areas that are not connected with the main part of our system.

(Testimony of P. M. Downing.)

Q. Is it a fact that the great central valleys in general clear their products through the San Francisco Bay area? A. Yes, they do.

Q. And that the distribution and manufacturing for the central valley area is also in the Bay district?

A. The Bay area is the market place, you might say, for the products that are raised in the two interior valleys.

Q. Now, can you summarize the advantages accruing from one company serving this entire area?

A. Well, first, it avoids the economic waste inevitably under competitive conditions.

It gives a highly diversified load thereby permitting a maximum use being made of existing facilities, and by building up the volume or density of business in the area served the cost of rendering service is reduced, which reductions are in turn refunded in lower costs of service to the ultimate users.

Q. Will you elaborate on the item of diversification? Is the agricultural load to a certain extent complimentary to your city and manufacturing load?

A. The agricultural load is largely irrigation pumping. [68] That comes on during the spring and summer months when the lighting load in the metropolitan areas is a minimum. The lighting load in the metropolitan areas is maximum when the irrigation pumping load is a minimum. So that that

(Testimony of P. M. Downing.)

one illustration, I think, will indicate the advantage that comes from operating the entire system as a unit, supplying every kind and character of service, because we can make a greater use of existing facilities by having a highly diversified load than we could if we were supplying one particular kind of service, say, irrigation pumping, or industrial power, or lighting only.

Q. Now, Mr. Downing, do economies result from the tying in on one unified service of hydro-electric plants scattered over a large geographical area with steam plants?

A. Yes. By operating the two together it enables us to make a maximum beneficial use of the available water supply; the steam plants taking the peaks of the load which cannot be carried on the hydro-plants.

Q. Is that true also to a degree with the hydro-plants themselves?

A. Yes. By operating with all of the hydro-plants, in fact all of the plants feeding into a common network of lines, it is the usual practice to allocate a certain definite load to the individual water power plants. In other words, if there is water enough to give, say, 50,000 kilowatts of power at a given plant the load dispatcher instructs that plant [69] to carry 50,000 kilowatts of load and he will designate one plant to take the load swings, that is, the load fluctuations, so that you can see that by blocking this load off to the individual plants the

entire water supply at those individual plants can be fully utilized and there is none going to waste.

Q. Do you have a considerable variation in the precipitation and available water supply at the different plants, hydro-plants, throughout your system?

A. Yes, there is quite a variation. The precipitation north is greater than it is farther south. For instance, in Shasta and Plumas, and those northern counties, precipitation is heavier than it is as you get farther south. Likewise, there is a variation, of course, from year to year in the amount of precipitation.

We maintain quite a large number of storage reservoirs at a number of our different properties where water can be impounded during the flood water periods of the year and then released to supplement the natural flow of streams during the summer and fall months when the natural stream flows are low. In some of the reservoirs we carry water over from one year to the next in anticipation of a possible shortage of rainfall during a given year.

Q. Does it sometimes happen in a single year that some of the areas where your plants are located will be more favored in rainfall and snowfall than others? [70]

A. Yes. That happens quite frequently and that means that the plants in the more favored areas are able to pull more load and make up the deficiency in the plants dependent on their water sup-

(Testimony of P. M. Downing.)

ply where there is sub-normal precipitation.

Q. And that constitutes an additional advantage, does it not, in having a unified system extending over a considerable area? A. Yes, it does.

Q. Will you briefly state the economic advantages which accrue through having a coordinated operation in both the gas and electric services?

A. Well, of course, the principal advantages are economic.

As I have stated before, it enables a company operating in that way to make a maximum beneficial use of existing facilities. That means, of course, keeping the capital investment down to a minimum.

Of course, by one company operating in a given territory you eliminate the inefficiencies that result from competitive conditions.

There is an advantage too in joint operation of electric and gas properties in that one man or one group of men handle the servicing for both classes of services. Instead of having one man go out and set electric meters, another man come along and set gas meters, why one man handles all that. [71] If there is a complaint, and there is a man in a given territory, that man is competent and qualified to answer the customer's complaint whether it be regarding gas or electricity.

Q. How about meter reading and bill collecting?

A. That, of course, is another great advantage, especially in bill collecting, because one collector handles everything.

(Testimony of P. M. Downing.)

Q. Mr. Downing, what fuel does the company use in its steam generating plants?

A. We are equipped to use either gas or oil. Our practice is, wherever gas is not needed to supply the public, we use the excess in our steam plants. If, however, our pipe lines are loaded due to a cold spell and a resultant heavy demand for gas, there may not be gas available for our steam plants and then we use oil.

We can change from one fuel to the other in just a moment's time. It is a matter of closing one valve and opening the other, when you change from one fuel to the other.

Q. Does that method of operation result in substantial economies?

A. Yes it does, because we can always keep a full load on our gas lines. With these quick changes that can be made from one fuel to the other it is possible and, as a matter of fact, we do change from one fuel to the other many times during a day when a pipe line is pretty well loaded up [72] to its limit.

Q. So that you not only, by that operation, are able to use your gas transmission faciliteis to the maximum, but you are also able to enjoy a fuel at almost the cost of production and transmission?

A. Yes.

Q. Now, with respect to the rate policies of the Pacific Gas and Electric Company, will you state generally what the policy of the company is?

(Testimony of P. M. Downing.)

A. The trend of rates, both gas and electric, has always been downward. Many rate reductions have been made and those rate reductions have been made possible by the more efficient methods of producing electricity and gas and by building up the volume of business on existing facilities, thereby keeping the capital investment per customer down to a minimum.

Q. Will you state the reduction in terms of dollars in the revenue accruing from sales of electricity and gas by the company during the years 1921 and 1940?

A. Starting with the year 1921 the following rate reductions have been made—and these figures are arrived at by determining, first, the revenue under existing rates and the revenue under reduced rates. The difference between those two figures represents the saving which I will give.

In 1921 there was an electric rate reduction of $3,000,000 [73] per year.

In 1923 there was another $3,000,000 rate reduction.

In 1928 there was a reduction of $2,418,900.

In 1930 there was a reduction of $3,020,000.

In 1932 there was a reduction of $650,000.

In 1936 there was a reduction of $4,000,000.

In 1937 there was a reduction of $3,095,000.

In 1939 there was a reduction of $2,225,000.

In 1940 there has been a reduction of $2,000,000.

(Testimony of P. M. Downing.)

This makes a total reduction during that period, in the electric department, of $23,408,900.

Now, gas reductions during that period were as follows:

In 1930, that was when we brought in natural gas which had approximately double the heating value of manufactured gas, and there was very little difference in the price charged for the natural gas as compared with the manufactured gas, there was a saving to gas customers of $8,173,000.

The Examiner: That is on the basis of the additional B.T.U.'s contained in natural gas as a weighted figure, I take it?

The Witness: Yes. In other words, that means this: That the gas customers, by the introduction of natural gas with its higher heat unit value, were able to make savings for a given amount of heat.

The Examiner: They got more for their money?

[74]

The Witness: More heat for the same money. For the same amount of heat that they had under the manufactured gas they saved $8,173,000.

The Examiner: All right.

A. (Continuing) In 1936 there was another gas reduction of $2,606,000;

In 1938 there was a reduction of $2,026,600.

In 1939 there was a reduction of $1,000,000.

In 1940 there was a reduction of $2,900,000.

That makes a total reduction, total economies resulting to customers during that period, of $16,705,600.

(Testimony of P. M. Downing.)

The Examiner: When you speak of this reduction, both as to electricity and gas, does that mean a reduction of amount of revenue to the company, or a reduction in rates on the products or a combination of those two elements, and the value that they get for the amount paid, such as you have described, that is, the additional heating value for the same amount of money?

The Witness: Lower rates which went into effect during those different years resulted in savings to customers and a corresponding loss in gross to the company.

The Examiner: I see.

By Mr. Phleger:

Q. Mr. Downing, would it be accurate to express it this way: That if your customers, electric and gas, in the [75] calendar year 1940 paid for electricity and for gas heat units, the rates that were in effect in 1921 they would spend $40,000,000 more?

A. Yes.

Q. That is, if the 1920 or 1921 rates were in effect this year the customers this year would have paid $40,000,000 more for the same quantity of electricity and heat units in gas than they did actually pay? A. Yes.

The Examiner: Just for the year?

Mr. Phleger: Per year.

By Mr. Phleger:

Q. And if you didn't change your rates next year there would be a similar $40,000,000 saving to

(Testimony of P. M. Downing.)

customers next year, and the same for 1942, and so on?

Miss Calkin: That is assuming your customers would be using the same amount of electricity and gas at those higher rates, is it not?

Mr. Phleger: That is not an assumption.

By Mr. Phleger:

Q. If you take the quantity of electricity and heating units in gas that were used this year and applied the 1920 rates to them your customers would pay $40,000,000 more in rates, is that not right?

A. Yes. [76]

Miss Calkin: But the theory of that rate reduction is that the customer uses more electricity and more gas because he gets a cheaper rate, so I say that is based upon the assumption that your customers would use in 1940 the same amount of electricity and would consume the same amount of gas which they did consume under the lower rates.

Mr. Phleger: That is right.

By Mr. Phleger:

Q. They not only do that, but they consume a great deal more because, as you say, one thing that makes the rate reductions possible is the increased consumption due to the reduced rates, which is a very lively factor, I take it, in the making of these reductions? A. Yes.

The Examiner: In other words, your point, Mr. Phleger, is that there is no assumption there, but that taking the amount of electricity and the heat

(Testimony of P. M. Downing.)

units that were consumed this year, they would have paid $40,000,000 more had the 1920 rates been in effect than they did pay under the present rates. But certainly there was more consumption now than there was in 1920.

Mr. Phegler: Yes.

The Examiner: And each reduction in rates probably stimulated some additional consumption.

Mr. Phleger: That is right. The company's gross [77] hasn't been reduced by that amount, but the amount that the customers would otherwise pay has been reduced by that amount.

The Witness: The $40,000,000 is both gas and electricity.

The Examiner: I understand.

By Mr. Phleger:

Q. Now, Mr. Downing, you have already spoken with respect to rural electrification. Would you mind giving us some of the figures with respect to the 1939 activity of the company in extending its rural electrification services?

A. During the year 1939 the company built 784 miles of rural electric lines, bringing the total at the end of 1939, that is the total mileage of rural lines, up to 27,000. The extensions made in 1939 increased the number of electrified farms by 1657. In other words, the 784 miles of new rural lines enabled us to give service to 1657 new customers.

We have done a great deal to encourage the use of electric power in rural communities. For in-

(Testimony of P. M. Downing.)

stance, we maintain a staff of 30 farm power advisors who are experts, you might say, on both electricity and farming. These men make approximately 45,000 calls on rural customers every year.

We also maintain a free irrigation pump testing service. In other words, these rural communities use a great many pumps for pumping irrigation water. We maintain a staff of engineers who go out and test these pumping installations to determine whether or not they are as efficient as they should be. Gen- [78] erally it results in pointing out to the customers the inefficient plants, plants where they are making an inefficient use of the electric service which they buy, and it enables them, without any cost for testing purposes, to improve the efficiency of their installation.

In 1939 we made 4,658 of these different pump tests. During the eight years since that service was inaugurated we have made 30,710 individual pump tests.

Our rural rates are among the lowest in the United States, our average rural rate being 1.6 cents per kilowatt hour compared with an average of 3.1 for the rest of the country.

Q. You have already, in response to a question, told of the award to the company for its rural electrification activities during 1939. The name of that award was the Thomas W. Martin Award, was it?

A. Yes.

The Examiner: Is that an annual award?

(Testimony of P. M. Downing.)

The Witness: Yes, an annual award.

Mr. Phleger: Mr. Examiner, I now offer in evidence a chart entitled "Pacific Gas and Electric Company Chart Showing Relative Cost of Electricity and Gas for Residential Use in San Francisco Compared with Rates in Effect January 1, 1920", as Applicant's Exhibit No. 8.

Miss Calkin: No objection.

The Examiner: It will be received in evidence and so [79] marked.

(The chart above referred to was marked Applicant's Exhibit No. 8 and received in evidence.)

By Mr. Phleger:

Q. Was Applicant's Exhibit No. 8 prepared under your direction?

A. Under my general direction; yes.

Q. Will you state what it shows?

A. It shows the reductions in rates, residential gas and electric rates, during the period from 1920 to 1940 based on rates as of 1920 at 100 percent. In other words, starting with 1920 rates as 100 percent, you will notice during the year 1920 an increase in the solid line there which represents electric rates. That increase continued until about the middle of 1921 at about 112 percent of the electric rates in effect at the beginning of 1920. It continued above the 100 percent line until 1923. That was a surcharge that was added to electric rates during the time of the World War.

(Testimony of P. M. Downing.)

However, beginning in 1923 you will notice quite a drop in rates—electric, I am speaking of now—in fact, in 1923 the electric rates were only about 82 or 83 percent of what they were in 1920.

They continued on a straight line basis until 1928 when there was another cut in electric rates, which brought the 1928 rates down to about 66 percent of what they were in 1920. [80]

The next reduction was in 1930 when there was another rate reduction.

Then it continued along a straight line until the early part of 1936 when another rate reduction was made, which brought the rates down to about 56 percent of what they were in 1920.

Another reduction in 1937 brought them down to slightly over 50 percent of what they were in 1920.

Then another reduction was made in 1939 and another in 1940, which made the domestic residential rates for electricity in 1940, 46.1 percent of what they were in 1920.

A similar situation obtains with the gas. There are some fluctuations there above the 100 percent line in the gas curves and some below. The explanation for that is that under some of our gas schedules the prices of gas change with the price of oil. So that as the price of oil went up the price of gas went up. That is true over until the end of 1925.

In 1925 it ran along on the 100 percent line until early in 1928 when there was a small reduction.

(Testimony of P. M. Downing.)

Another in 1929 and then a very substantial reduction in 1930. That is when natural gas was brought in.

The Examiner: That reduction there, if I understand this footnote correctly, takes into consideration the number of B.T.U.'s additional at this rate? [81]

The Witness: Yes. In other words, a saving to the customers due to a better quality of gas which we started serving during the latter part of 1929 and the early part of 1930.

The Examiner: Do you know whether or not as of that date there was an actual reduction in the rate paid or was there an increase in the rate paid?

The Witness: If anything schedules were slightly modified. I think perhaps there may have been a slight increase in some of the blocks, but very little if any. The rates were made substantial, as they were with the manufactured gas.

The Examiner: That which is reflected by this substantial reduction on the chart, Exhibit 8, is a result of the fact that there is a higher B.T.U. per cubic foot of the natural gas than that of the manufactured gas?

The Witness: Correct. We started to serve a better quality of gas and the customers didn't have to buy as much of it for the same amount of heat.

There was no change in gas rates then until the early part of 1936 when the cost to customers for a given amount of heat, as compared with 1920, was

(Testimony of P. M. Downing.)

only about 58 percent; and another reduction in 1938; another reduction in 1939, and the last reduction was in 1940, which brings the rates today—residential, I am speaking of now—down to where they are only 46.3 percent of what they were in 1920. [82]

The Examiner: If you have completed explanation of that chart we will take a short recess at this time.

Mr. Phleger: Yes.

(Whereupon a short recess was taken after which proceedings were resumed as follows:) [83]

The Examiner: We can resume the hearing now if you are ready.

Mr. Phleger: I will offer in evidence as Applicant's Exhibit 9 a chart headed "Organization Chart, Pacific Gas and Electric Company".

Miss Calkin: No objection.

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 9.

(The chart above mentioned was marked Applicant's Exhibit No. 9 and was received in evidence.)

By Mr. Phleger:

Q. Referring to Exhibit 9, Mr. Downing, was that exhibit prepared under your direction?

A. Yes sir.

Q. Will you describe what it shows?

(Testimony of P. M. Downing.)

A. It is intended to show the organization setup of the company. Beginning at the top we have a Board of Directors of 15 members elected by the stockholders. As a matter of convenience we have the Executive Committee which handles many of the details which would otherwise go before the Board of Directors. There are 4 directors on the Executive Committee with the president as ex-officio member of the Board. The members of the Executive Committee are nominated by the president and elected by the Board of Directors. The Board of Directors elect the president. [84]

Reporting to the president you will notice on the left first is the vice-president and assistant to the president. He is the president's assistant; he has a considerable responsibility in connection with tax matters, with publicity and with personnel matters.

On the right is the vice-president, secretary and treasurer, who has to do with the corporate records of the company and the finances of the company.

Reporting to the president is the comptroller who has to do with auditing and matters of that kind.

General operations of the system are handled through the vice-president and general manager, and the vice-president and assistant general manager.

The territory in which the company operates is divided into 13 different geographic divisions. Each of those divisions is in charge of a division manager who is the company's representative of those various

(Testimony of P. M. Downing.)

divisions. Those division managers have their own operating forces; they have their own sales forces; they have a certain amount of engineering assistance, accounting and so on. In other words, each division is in some respects operated as a separate company, each of those division managers reporting to the vice-president and general manager.

Also reporting to the vice-president and general manager are a number of what I might call service departments. [85]

For instance, on the left there you will notice the chief engineer who handles technical matters in connection with the company's electric and hydraulic and structural activities. He reports directly to the vice-president and general manager and he also has contacts and acts in an advisory capacity to all of our various division managers.

Then, we have the engineer of electric operation. He is the general supervisor of all of our electric operations except the San Francisco division and East Bay division. Those two divisions are handled by the, or under the direction of the general superintendent of San Francisco and East Bay divisions. The reason for that is the system is so large that it is better, it can operate more efficiently by having a separate supervisor over the larger metropolitan areas here in San Francisco and Oakland.

Then, we have the engineer of general construction. That is a department that handles our major construction work, for instance, the construction of

(Testimony of P. M. Downing.)

a power house or an important transmission line, one involving a substantial investment and a substantial amount of work where the divisional organizations are not set up to handle work of that character. The engineer of general construction will take over any work that is assigned to him irrespective of what division it may be in. [86]

Over a period of a good many years we have had enough work under way to keep an engineering department and a general construction department busy practically all of the time.

Then, the next one to the right there is the vice-president in charge of public relations and sales. Perhaps that might better be called in charge of customer relations and sales, because that office formulates sales policies of the company and acts in an advisory capacity to all of our divisional—all of our division managers.

Then, we have the engineer of gas operations whose duty and responsibility corresponds to that of engineer of electric operations. He has general supervision over and acts in an advisory capacity to our division managers in so far as our gas distribution systems are concerned.

Then, we have the vice-president and executive engineer. The greater part of the time of that department is taken up in the study of rate schedules, operating results and other similar matters, also the valuation of properties and the land department also reports to him; that is, by the "land depart-

(Testimony of P. M. Downing.)

ment" I mean the department that has to do with the purchase and sales of lands, the acquisition of rights of way and so on.

I have already stated the general superintendent of San Francisco-East Bay divisions has general supervision [87] over the electric and gas operations in the San Francisco and the East Bay divisions.

Then, also reporting to the vice-president and general manager, on the right you will notice there "Purchases and Stores Manager". The head of that department has charge of all of our purchasing and general supervision over the material and supplies on hand.

Credit collection and stock sales manager, he has to do with the passing on the credit of various customers and the handling of delinquent accounts, et cetera.

The automotive engineer acts in a consulting capacity in connection with the automotive equipment which we have over the entire system.

The rate attorney devotes his entire time and attention to the preparation of applications and so on to the Railroad Commission, the handling of rate matters before the Commission and so on.

The general counsel has to do with legal matters of the company, publicity manager, handles all advertising, publicity releases and so on.

Personnel manager has to do with the employee records of the company, the employing of men for

(Testimony of P. M. Downing.)

the company and is a sort of liason officer between the individual employees and the general manager.

In the law department, or the general attorney, handles [88] routine legal matters that come up, defending suits, bringing condemnation actions, adjusting claims and so on.

The manager of the natural gas division has the general management of our gas gathering lines in the field and the high pressure gas lines over the system.

Q. Mr. Downing, does the company also maintain various committees?

A. Yes; in the upper right hand corner of this exhibit you will find a tabulation there showing on the left "Committee Members" headed by the president, vice-president and general manager, and so on down the line, listing a number of officers, department heads and others.

On the right of that tabulation you will see a number of committees, seven. The first there is the President's Advisory Committee. Now, following down under that column under the caption "President's Advisory Committee" you will see a black rectangle after the president's name. That indicates that the president presides at the meetings of the President's Advisory Committee.

The cross hatched rectangles indicate the officers or department heads which sit in on the President's Advisory Committee.

(Testimony of P. M. Downing.)

The next committee is the Engineering Committee. The vice-president and general manager is chairman of that committee and you will notice the various officers and [89] departmental heads who sit in on that committee, and the same is true of all of those committees.

In the next to the last column there under the heading "Employees Welfare Committee" you will notice that the last three groups who sat in on that committee are the president of the Pacific Service Employees Association, and the vice-president of the Pacific Service Employees Association, and seven members of the Pacific Service Employees Association.

The Employees Welfare Committee has to do primarily with matters affecting the welfare of the employees.

The vice-president in charge of public relations and sales is the chairman of that committee. They meet every month, or every five or six weeks, and the employees are well represented on that committee and free and open discussions are had on all matters that are brought before that committee by these seven members at large who, as I think I have already said, are elected by the employees themselves to represent them on this committee.

Central Safety Committee acts in an advisory capacity in suggesting ways, means and methods of improving the safety of employment.

(Testimony of P. M. Downing.)

Q. Mr. Downing, the President's Advisory Committee, what are its functions and how often does it meet?

A. That meets every week, every Monday afternoon, and all matters considered by that committee have to do with the [90] general policies or the major questions that come before the management of the company. The members of all these committees express their views freely and all of these committees are open forums for the expression of opinion by each and every member of the committee.

Q. Now, with respect to the Engineering Committee, what are its functions and how often does it meet?

A. It meets not at regular dates; sometimes it will meet two or three times a week; then, it may go by for a couple of weeks before important technical matters come up about such matters as decisions as to the construction of new facilities, such as power houses, transmission lines and so on, whether those power houses shall be hydro or steam, and matters having to do primarily with the physical property and operations of the company, and the same might be said of the Gas Engineering Committee which considers similar problems in the gas department.

Q. Now, what of the Research Committee?

A. The Research Committee is a committee appointed to consider suggestions made by the rank

(Testimony of P. M. Downing.)

and file of employees, looking toward either better methods of operation or more economical methods of operation. Over a period of a good many years the company has offered prizes to employees who have made suggestions which the Research Committee may consider meritorious, and those suggestions when and as they come in [91] from the outside employees are considered by the Research Committee. I might say that we have hundreds of such suggestions come in every year; many of them have considerable merit; some have less merit.

Q. What of the Appropriations Committee?

A. The Appropriations Committee has referred to it all estimates covering expenditures for either new work or the reconstruction of existing properties. They review these, what are called "G.M. Estimates", general manager's estimates and it gives the various department heads the opportunity of knowing what expenditures are contemplated and it also gives them the opportunity of making any suggestions if they think that the expenditure is not necessary or that something different from what is proposed should be done.

Q. Mr. Downing, you have testified to the personnel of the Executive Committee. Do any of the officers of the company, other than those who are officially members of the Executive Committee, meet with it? A. Yes.

Q. How often does the Executive Committee meet? A. Every week.

(Testimony of P. M. Downing.)

Q. And which members of the company, which executives of the company, other than the president, meet regularly with the Executive Committee?

A. The vice-president and general manager, the [92] vice-president and assistant general manager, the vice-president and assistant to the president and the vice-president secretary and treasurer.

Q. And do they participate in the discussions with the Executive Committee? A. Yes sir.

Q. Where is the company's office?

A. The company's general office is at 245 Market Street, San Francisco.

Q. How long has it been there?

A. Between 15 and 20 years.

Q. Prior to that where was it?

A. At 447 Market Street—445 Market Street.

Mr. Bosley: Sutter.

The Witness: Sutter, I should say.

By Mr. Phleger:

Q. Prior to that?

A. It was in the Convent up here at Ellis and Franklin Streets.

Q. That is after the fire?

A. After the fire, yes.

Q. During the 40 years that you have been with the company has the company ever had a principal office other than in San Francisco? A. No.

[93]

Q. Where do the Board of Directors meet?

A. 245 Market Street.

(Testimony of P. M. Downing.)

Q. Where does the Executive Committee meet?

A. 245 Market Street.

Q. During the time that you have been with the company has the Board of Directors or the Executive Committee ever met any place other than in San Francisco? A. Not to my knowledge.

Q. Does the company maintain—well, you have already testified.

What is the nature of the work of the purchasing agent of the company?

A. The purchasing agent handles all purchases of materials and supplies of whatever kind or character. He also has general supervision over the material and supplies which the company has on hand in its various warehouses.

Q. Has the company ever participated with any other company excepting its own subsidiaries in any joint purchasing arrangement?

A. No, never.

Q. Does the company purchase all of its supplies through its own purchasing department?

A. Yes sir.

Q. Now, with respect to the engineering and construction [94] departments of the company, does it maintain itself at its own headquarters a complete engineering and construction department?

A. Yes sir.

Q. Does the company do all its own engineering?

A. Yes, it does all its own engineering.

(Testimony of P. M. Downing.)

Q. Does the company do all its own construction?

A. Not all of its own construction. It contracts some work, but we have a construction organization. We do a substantial amount of construction work ourselves, but there are certain jobs which are let out by contract and supervised by our own general construction department.

Q. Are these firms to whom contracts have been let affiliated or associated with any other public utilities? A. Not that I know of.

Q. Just general contractors?

A. General contractors, yes.

Q. Can you state some of the major construction projects which the company has engaged in since 1920 and on which it has performed the engineering and construction work?

A. Some of those projects since 1920 are the following: Pit 1 Power House and Tunnel representing an expenditure of $7,500,000; Vaca-Dixon Sub, $1,500,000; Pit No. 3 Tunnel Dam and Power House representing an investment [95] of $11,000,000; Salt Springs Dam, representing an eight million dollar investment; Tiger Creek Conduit, representing an investment of four and a half million dollars; Tiger Creek Power House, an investment of three million dollars; the Pit Vaca-Dixon Transmission Line $6,000,000; 250,000 kilowatt steam units here in San Francisco, eight million dollars; two new turbine units in Oakland, seven million

(Testimony of P. M. Downing.)

dollars; two natural gas lines, Milpitas to San Francisco, $2,750,000; Stan-Pac Line from—

The Examiner (interposing): That is a pipe line?

The Witness: Gas pipe line, yes. Kettleman to Tracy Junction five and a half million dollars; Kettleman Compressor Station $1,250,000; Stanislaus Tunnel, 11-½ miles, two and a half million dollars; Colgate Tunnel, 4½ miles, $1,250,000.

We have under construction at the present time, some of the work being done by our own forces and some by independent contractors under the general supervision of our own construction department, a 50,000 kilowatt steam electric unit at Avon representing an investment of $5,000,000; another 50,000 kilowatt steam unit at Martinez representing an investment of five million dollars, and a third 50,000 kilowatt steam unit at Oleum representing an investment of five million dollars. [96]

Those are some of the major jobs.

Mr. Phleger: I will offer as Applicant's Exhibit next in order—

The Examiner: 10.

Mr. Phleger: A map of the Pacific Gas and Electric Company showing its divisions as of November 1940.

The Examiner: Without objection it will be received in evidence and marked Applicant's Exhibit 10.

(The map above refered to was marked Applicant's Exhibit No. 10 and was received in evidence.)

(Testimony of P. M. Downing.)

By Mr. Phleger:

Q. Referring to Exhibit 10, Mr. Downing, was that exhibit prepared at your direction?

A. Yes sir.

Q. And are the facts which it purports to show correctly delineated? A. They are.

Q. Will you explain what the exhibit shows?

A. This exhibit is intended to show the geographic boundaries of the various devisions of the company which are under the general direction of the division managers, as I pointed out on the organization chart.

On the extreme north we have Humboldt and Shasta, North Bay and DeSabla, Colgate, Drum, Sacramento, Stockton, [97] East Bay, San Francisco, San Jose, Coast Valleys and San Joaquin Power.

The Examiner: Within that outline of the San Joaquin Power there is another figure also outlined in red.

The Witness: That is an area which we do not serve. That is served by the Southern California Edison Company.

Those various divisions cover the entire territory in which we operate. As I have already stated, they are under the general supervision of division managers and each functions to some extent as independent organizations, coordinated, of course, through the general office.

(Testimony of P. M. Downing.)

By Mr. Phleger:

Q. Mr. Downing, are any of the public utility properties of the Pacific Gas and Electric Company located outside the State of California?

A. None at all.

Q. Does the Pacific Gas and Electric Company transact any of its public utility business outside of the State of California?

A. None at all.

Q. Does Exhibit 10 show geographically the area within the State of California in which all of the public utility properties of the company and all of its business is located? [98] A. Yes sir.

Q. Do you know the company whose name is Vallejo Electric Light & Power Company?

A. Yes sir.

Q. Does the Pacific Gas and Electric Company own any stock in that company? A. Yes.

Mr. Phleger: May I ask a short adjournment? There is an important message for me.

The Examiner: Surely. Do you want to recess for the day?

Mr. Phleger: I think we might go on a little further.

The Examiner: All right, we will have a short recess at this time.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

The Examiner: We will go ahead with the hearing.

(Testimony of P. M. Downing.)

Mr. Phleger: May I have the last question?

(The last question and answer were read by the reporter.)

By Mr. Phleger:

Q. Approximately what percentage of it?

A. That is the Vallejo company you are speaking of?

Q. Yes.

A. Forty-five and eight tenths per cent of the stock [99] of the Vallejo company is owned by Pacific Gas and Electric.

Q. Do you know who owns the balance of the stock? A. It is owned by the Gaspar family.

Q. Does the Pacific Gas and Electric Company have representation upon the board of that company? A. Yes.

Q. How many representatives does it have?

A. Two of the five directors.

Q. Does the Pacific Gas and Electric Company control the management or policies of the Vallejo Company? A. No.

Q. Where are the physical properties of the Vallejo company located?

A. In the City of Vallejo.

Q. Does it conduct any business or does it own any properties outside the confines of the State of California? A. Not that I know of, no.

Q. Now, in this Exhibit 10, the object of it was

(Testimony of P. M. Downing.)

merely to show, was it not, the geographical limitations of the various divisions of the company?

A. That was the purpose of the exhibit, yes.

Q. There are certain areas and certain cities within the outer confines of the various divisions where some service is supplied by other agencies, is there not, such as Vallejo, for instance? [100]

A. Yes; they sell to the individual customers, but we supply power to the City of Vallejo, or to the Vallejo Light & Power Company at wholesale and they distribute it.

Q. That is true also, is it not, with the City of Palo Alto? A. Yes, quite a large number of—

Q. (interposing) And true also of the Coast Counties Gas & Electric? A. Yes.

Q. It buys a large amount of its energy from you? A. All from us.

Q. All from you.

Mr. Bosley: Roseville?

A. I will correct that. They do have a small water power plant down in the Santa Cruz mountains from which at certain seasons of the year they can produce a small amount of power themselves, but the greater part of it, by far the greater part of their requirements are purchased from us.

By Mr. Phleger:

Q. In the amended and supplemental application of the company it is set forth on page 2 that the company owns 100 per cent of the voting power in Arlington Properties Company, Limited.

(Testimony of P. M. Downing.)

A. Yes. That is correct.

Q. Will you state what the Arlington Properties [101] Company, Limited, is?

A. That is a company that owns some real estate, non-operative real estate, which serves no useful purpose in connection with the utility operations of the Pacific Gas.

Q. It has a subsidiary, has it?

A. Yes, Crystal Lake Company, Limited, which is a company we took over. It owns a ranch up in Shasta County which we acquired in order to get control of certain water.

Q. Are either of those companies public utilities? A. Neither, no.

Q. Are all of their properties located in the State of California? A. Yes sir.

Q. The San Joaquin Light & Power Corporation, 99 and eight tenths per cent of the voting stock is owned by the Pacific Gas and Electric Company. Is that company now engaged in the public utility business?

A. No, no; it is out of the public utility business, I would say.

Q. You have acquired all of its property, have you not?

A. We have acquired all of its properties and have transferred those properties to Pacific Gas and Electric Company.

Q. And you own all of the stock with the exception of [102] a very small number of shares of

(Testimony of P. M. Downing.)

common stock which are engaged in litigation, is that not right? A. That is correct, yes.

Q. Now, the Standard Pacific Gas Line, Incorporated, you have already testified that you own 50 per cent of the stock of that company.

A. That is correct.

Q. Is it a public utility?

A. No, it is not a public utility, but we have considered our investment in that company as a public utility investment.

Q. Are all of the properties of that company located in the State of California?

A. Yes sir.

Q. The Vallejo Electric Light & Power Company you have already mentioned.

A. Yes sir.

Q. All of its properties are located in the State of California? A. Yes.

Q. The Vallejo Electrical Supply Company?

A. Valley.

Q. Valley Electrical Supply Company?

A. That is an appliance sales company operating in Fresno. It sells appliances at both wholesale and retail. [103]

Q. Is it a public utility? A. No.

Q. Does it own any property outside the State of California? A. No.

Q. The Western Canal Company is shown in the application and it is stated that the Pacific Gas

(Testimony of P. M. Downing.)

and Electric Company owns 85 per cent of the voting power. Is that company a public utility?

A. Yes, supplying water to the public.

Q. And where are its properties located?

A. It takes water out of the Feather River a short distance below Oroville. The canal runs off in a general westerly direction through Butte and Sutter Counties.

Q. Are all of its properties located in the State of California? A. Yes.

Q. Does the Valley Canal Company engage in any business other than the transmission and sale of water? A. What company did you say?

Q. The Western Canal Company?

A. No, no.

Q. It is not a public utility within the meaning of the Public Utility Holding Company Act of 1935, is it? [104]

A. No, I understand not, although I am not familiar with the definition of the term "public utility" as it is used in that Act.

Q. I will read the definition: "'Public-Utility Company' means an electric utility company or a gas utility company." A. No.

Q. This company neither conducts an electric nor gas business, does it?

A. It sells water only.

Mr. Phleger: If it is convenient, I suggest this is an appropriate time to adjourn.

(Testimony of P. M. Downing.)

The Examiner: We will recess until tomorrow morning at 10 o'clock. We will resume the hearing in this room.

(Whereupon at 4:15 p. m., the hearing in the above-entitled matter was adjourned to November 13, 1940 at 10:00 a. m.) [105]

Room 403, Civic Auditorium Building,
San Francisco, California,
Wednesday, November 13, 1940.

Met, pursuant to adjournment, at 10:00 o'clock a. m. [106]

PROCEEDINGS

The Examiner: The hearing in the matter of the P. G & E. will resume.

Are you ready, Mr. Phleger?

Mr. Phleger: Yes.

Whereupon—

P. M. DOWNING

was produced as a witness for and on behalf of the Applicant, and having been previously duly sworn, testified further as follows:

Direct Examination (Resumed)

By Mr. Phleger:

Q. Mr. Downing, Exhibit 10 of the Applicant shows the territorial limits of the various divisions of the company. Someone might inadvertently consider, because of the fact that those divisions cover

(Testimony of P. M. Downing.)

all of the territory within their outer confines, that there are no other utilities selling electricity in those areas.

Have you prepared a statement showing the privately owned utilities and the publicly owned utilities which serve in various portions of those areas?

A. Yes.

Mr. Phleger: I will offer in evidence as Applicant's Exhibit 11 two sheets headed "Pacific Gas and Electric Company sales to other utilities for resale." [107]

Miss Calkins: No objection.

The Examiner: The document will be received in evidence and marked Applicant's Exhibit 11.

(The two sheets mentioned above were marked Applicant's Exhibit No. 11 and were received in evidence.)

By Mr. Phleger:

Q. Mr. Downing, was Applicant's Exhibit 11 prepared under your direction? A. Yes sir.

Q. Are the facts shown on it true and correct?

A. Yes sir.

Q. Will you state what that exhibit shows?

A. It shows the privately owned electric utility companies to which the Pacific Gas and Electric Company sells power for resale by those various companies. It also shows the kilowatt hours sold to those various companies during the five years 1935 to 1939, both inclusive.

(Testimony of P. M. Downing.)

The second sheet shows the publicly owned utilities to which Pacific Gas and Electric Company sold power for resale by those publicly owned utilities in the various communities. It also shows the kilowatt hours billed to those various publicly owned utilities during the five years 1935 to 1939, both inclusive.

Q. Have you any other comments or observations to make upon it? [108]

A. In none of these—none of the areas in which these resale companies distribute electric energy are we in competition with those companies. The last competitive situation was cleared up within the last year when the Pacific Company sold its electric distribution facilities in the Modesto Irrigation District to the district itself. The Modesto and Turlock Irrigation Districts do distribute energy within the confines of their respective districts. The two districts have a jointly owned dam and hydro-electric installation on the Tuolumne River.

The Turlock's share of the energy produced at that plant is sufficient to meet all of their requirements. The Modesto's share, however, is not sufficient to meet the requirements of that district so that the Modesto District is a purchaser of power from Pacific Gas to supplement their own production.

I might also add that there are two or three—I haven't in mind the exact number at the moment—utility companies operating in the northern part of the state in areas not presently covered by the lines

(Testimony of P. M. Downing.)

of Pacific Gas and Electric Company. I have in mind a company operating over in Fort Bragg. They distribute there in the town of Fort Bragg obtaining their power, as I understand, from some of the lumber mills there using waste material for fuel.

Then, there is another small concern supplying a very [109] limited area in Benbow and Garberville. That area is rather isolated and our lines are not in there at the present time, so that we are not prepared to supply them. We have, however, gone over the situation a number of different times because both of those companies have been quite anxious to get us to build lines in there and sell them power.

The Examiner: All of these companies appearing on both of these pages in Exhibit 11 are within the area outlined in Exhibit 10 and is the territory served by your company?

The Witness: Yes. In other words, these are wholesale customers as distinguished from the retail customers.

By Mr. Phleger:

Q. Mr. Downing, in paragraph 3 of the Amended and Supplemental Application of the Pacific Gas and Electric Company it is alleged as follows:

> "On June 30, 1936, said Mt. Shasta Power Corporation, Sierra and San Francisco Power Company, Modesto Gas Company, Great West

(Testimony of P. M. Downing.)

ern Power Company of California, Napa Valley Electric Company, Feather River Power Company, Great Western Power Company and California Electric Generating Company, having previously wound up their affairs and distributed their operating properties and other assets to Pacific Gas and Electric Company were finally dissolved.

"Midland Counties Public Service Corporation, [110] having previously wound up its affairs and distributed its operating properties and other assets to Pacific Gas and Electric Company, was finally dissolved on or about December 28, 1939.

"San Joaquin Light & Power Corporation is now in process of winding up its affairs and has distributed to Pacific Gas and Electric Company all of its operating properties and other assets except a sum of money held in reserve for eventual distribution to minority common stockholders whose rights have not yet been judicially determined. Said San Joaquin Light & Power Corporation is no longer a public utility company and neither owns nor operates any gas or electric properties and conducts no public utility business.

"The distribution of assets of each of the aforesaid corporations was made under authority of an order of the Railroad Commission of the State of California."

(Testimony of P. M. Downing.)

Are the allegations which I have just read true?

A. They are true and correct.

Q. Mr. Downing, are you a stockholder in the Pacific Gas and Electric Company? A. Yes.

[111]

Q. How many shares do you own?

A. I own 2,027 shares of common stock and 2,624 shares of preferred stock.

Q. When did you acquire this stock?

A. I acquired that at various times over a period of 25 years.

Q. Have you ever sold any stock of the Pacific Gas and Electric Company?

A. I sold some in 1929, or about that time.

Q. Are the shares which you hold now greater in number than you have held at any previous time?

A. Yes.

Q. Do you own any stock in the North American Company? A. No, none at all.

Q. Have you ever owned any stock in the North American Company? A. No.

Q. Do you own any stock in any subsidiary of the North American Company? A. No.

Q. Have you ever owned such stock?

A. No, none at all.

Q. Who first suggested to you becoming a director of the Pacific Gas and Electric Company?

A. A. F. Hockenbeamer, who at that time was president [112] of Pacific Gas and Electric.

Q. Who first suggested to you the matter of

(Testimony of P. M. Downing.)

becoming vice-president and general manager of the company? A. Mr. Hockenbeamer.

Q. Since your election as a director of the company in August of 1929 have you attended meetings of the Board of Directors regularly? A. Yes.

Q. Have you also during that period attended regularly the meetings of the Executive Committee?

A. Yes sir.

Q. Are matters which come before the Board of Directors of the company freely and fully discussed? A. Yes.

Q. Does any director or group of directors dominate the meetings of the Board? A. No sir.

Q. Have you ever hesitated to express freely at any meeting of the Board your own views upon subjects brought before the meeting?

A. Never.

Q. Have you ever at any meeting of the Executive Committee hesitated to express freely and fully your views? A. No.

Q. Were you acquainted with Mr. Frank Dame?

[113]

A. Yes.

Q. An officer of the North American Company now deceased? A. Yes, I knew him.

Q. Were you acquainted with Mr. Edwin Gruhl, an officer of the North American, now deceased?

A. Yes sir.

Q. Are you acquainted with Mr. F. W. Doolittle? A. Yes.

(Testimony of P. M. Downing.)

Q. Formerly an officer of the North American Company and a director of Pacific Gas and Electric Company? A. I am, yes.

Q. Are you acquainted with Mr. Fogarty and Mr. Freeman who are now officers of North American Company and now directors of Pacific Gas and Electric Company? A. Yes sir.

Q. When did you first become acquainted with those gentlemen?

A. Shortly after the taking over by Pacific of the stock of the Great Western and San Joaquin and the Midlands.

Q. That was in 1930? A. 1930, yes.

Q. How frequently have you come in personal contact with any of those men?

A. Oh, perhaps not more than half a dozen times. [114]

Q. Have you ever had any correspondence with any of them? A. No.

Q. Did any of those men ever visit San Francisco?

A. I think they have all been in San Francisco with the possible exception of Mr. Freeman; I understand he has never been in California.

Q. Do you recall any of those men having attended directors' meetings of the Pacific Gas and Electric Company?

A. I think maybe Mr. Gruhl attended one or maybe two meetings, when he happened to be here in California, and also Mr. Fogarty has attended

(Testimony of P. M. Downing.)

perhaps one or two meetings. I don't recall whether Mr. Doolittle ever attended a meeting or not. Mr. Freeman has never attended a meeting.

Q. In the dozen or so times that you have seen these gentlemen have they ever discussed with you the business and affairs of the Pacific Gas and Electric Company?

A. Only in a very casual way, may have been mentioned during the course of our casual conversations.

Q. Have you ever been requested by any of these gentlemen or anyone else connected with the North American Company to vote in any particular way or to take any particular action as a director, officer, or otherwise of the Pacific Gas and Electric Company? A. Never by anyone. [115]

Q. Have you ever loaned Pacific Gas and Electric engineers or experts to the North American Company? A. No.

Q. Has the North American Company ever loaned any engineers, experts or other employees to the Pacific Gas and Electric Company?

A. No.

Q. Have you ever received requests, instructions, or help from the North American Company or any of its officers or representatives in any engineering, rate proceedings, sales matters, or otherwise? A. None whatever.

Q. Have you ever received any requests, instructions or help from the North American Company

(Testimony of P. M. Downing.)

or any of its agents or representatives in any matters involving depreciation?

A. None whatever.

Q. Maintenance? A. No.

Q. Salaries? A. No.

Q. Accounting? A. No.

Q. Dividend actions? A. No.

Q. Personnel? [116] A. No.

Q. Did you know Mr. Guy E. Earl in his lifetime? A. Yes sir.

Q. Was he a director and member of the Executive Committee of the Pacific Gas and Electric Company for a period? A. Yes sir.

Q. When he was a member of the Board of Directors and of the Executive Committee did Mr. Earl take any prominent position or prominent part in the deliberation of those bodies?

A. The same as any other member of the Board or the Executive Committee.

Q. Did he take any more prominent position than any other director. A. No.

Q. Did he, during his service upon the Board and upon the Executive Committee, ever request or instruct you or any other member of those bodies to act in any particular way? A. No sir.

Q. How long have you known Mr. J. B. Black, president of the company?

A. Oh, perhaps 20 years, maybe 25.

Q. Did you know him before be became associated with [117] the North American Company in 1927? A. Yes sir.

(Testimony of P. M. Downing.)

Q. What position did he occupy before he became associated with the North American Company in 1927?

A. Well, he was with the Great Western Power Company. I don't recall just what his title was. I think it was vice-president and general manager.

Q. You have already testified that the Great Western Power Company was in active competition with the Pacific Gas and Electric Company.

A. Yes sir.

Q. Was Mr. Black one of the active parties in that competition? A. Yes sir.

Q. And in the course of that competition did you come frequently in contact with him?

A. Yes sir.

Q. You knew him personally? A. Yes sir.

Q. Were on terms of friendship, if not intimacy with him? A. We were friendly competitors.

Q. Yes sir. Now, Mr. Downing, I believe you testified that the Pacific Gas and Electric Company acquired a majority stock of the Great Western Company and the San Joaquin [118] Company in the early part of 1930. At that time was Mr. Black connected with the North American Company? A. Yes sir.

Q. And did he conduct in behalf of the North American Company the negotiations which led up to the execution of a contract whereby North American Company sold and the Pacific Gas and Elec-

(Testimony of P. M. Downing.)

tric Company acquired the securities I have just mentioned? A. Yes sir.

Q. Following that transaction did Mr. Black become a director of the Pacific Gas and Electric Company? A. Yes, I think he did.

Q. During the period from the acquisition by the Pacific Gas and Electric Company of these securities up until Mr. Black's election as president of the Pacific Gas and Electric Company in November 1935, do you know where his offices were?

A. In New York.

Q. He was an officer of the North American Company with his office in New York?

A. Yes sir.

Q. During that period did you see Mr. Black frequently?

A. Not frequently. I would generally drop into his office when I happened to be in New York and I generally saw him when he was in San Francisco.

[119]

Q. Do you know how often he would come to San Francisco?

A. Perhaps once every year or two.

Q. And how frequently would you be in New York?

A. Possibly once, maybe twice a year.

Q. During that period do you recall having communicated with Mr. Black on business matters affecting the P. G. & E.?

(Testimony of P. M. Downing.)

A. No, I had no communications with him whatever.

Q. During that entire period did he make any requests or suggestions to you with respect to the management, policies, or operations of the Pacific Gas and Electric Company?

A. None whatever.

Q. Did he ever suggest to you that you take any particular action as a director or member of the Executive Committee or as an officer of the Pacific Gas and Electric Company? A. No.

Q. Who first took up with you, Mr. Downing, the matter of Mr. Black's election as the president of the Pacific Gas and Electric Company?

A. Mr. C. O. G. Miller and Mr. Fred Elsey.

Q. Was the matter of his selection and election as president discussed by the directors informally before the meeting at which he was actually elected?

A. Yes sir. [120]

Q. And discussed with you? A. Yes sir.

Q. And was there general agreement between the directors respecting his election before the formal meeting was held at which he was elected?

A. Yes sir.

Miss Calkin: I think that since this is a rather important part of this examination that I will have to object to the leading questions by counsel for the Applicant.

Mr. Phleger: Well, I ask your indulgence; I was trying to save time.

(Testimony of P. M. Downing.)

Miss Calkin: I think the witness can tell what happened concerning Mr. Black's election.

The Examiner: All right. Proceed, Mr. Phleger.

Mr. Phleger: Well, suppose we adopt the suggestion of counsel.

By Mr. Phleger:

Q. Will you please tell what you know about the election of Mr. Black as president of the Pacific Gas and Electric Company, that is, what you personally know about.

A. The matter was discussed informally between Messrs. C. O. G. Miller, Fred Elsey and Allan Chickering before the meeting as which Mr. Black was elected president. They told me that they thought that Mr. Black was well qualified to handle the work and that they had decided that he would be [121] placed in nomination at the next meeting of the Board.

Q. And you were present at the meeting of the Board of Directors at which he was elected, were you? A. Yes sir.

Q. And was the vote unanimous?

A. Yes, it was.

Q. Do you remember the circumstances surrounding the acquisition of the stock of the Great Western and San Joaquin Companies in 1930 by the Pacific Gas and Electric Company?

A. Yes; I didn't sit in on the negotiations which led up to the taking over by Pacific Gas of that stock. Mr. Hockenbeamer and Mr. Black handled

(Testimony of P. M. Downing.)

those negotiations, but my office was adjoining Mr. Hockenbeamers and the matter was discussed between us on many different occasions.

Q. You were a member of the Board of Directors at the time of that acquisition, were you not?

A. Yes sir.

Q. Did you vote in favor of it?

A. Yes sir.

Q. And you also attended the meetings of the Executive Committee at that time, did you not?

A. Yes, I did.

Q. Was the matter fully discussed over a considerable period by the Executive Committee?

A. It was discussed on many different occasions. [122]

Q. Was anything said during those discussions as to the status of the North American Company as a stockholder in Pacific Gas and Electric Company after the transaction?

A. Yes, there was a great deal of discussion over the possible result of any one stockholder coming into possession of a substantial block of stock. There was a strong sentiment in the Board, and so expressed by different members of the Board against any control of Pacific Gas and Electric Company affairs passing from California, or from San Francisco to the East. That was a very important matter and discussed on many occasions when the consolidation was under consideration.

(Testimony of P. M. Downing.)

Q. Was any representation made to the Executive Committee and the Board of Directors by Mr. Hockenbeamer as to what the position of North American Company would be as a stockholder after the transaction?

A. Yes. It was very definitely stated that there would be no change in the control of Pacific Gas affairs. The management policy had always been handled here in San Francisco and it was stated very definitely by Mr. Hockenbeamer, who conducted these negotiations, that the control would continue to remain here in San Francisco and that North American would occupy the status of an investor.

Q. Was this representation made to the Executive Committee and the Board of Directors before it took action in [123] authorizing this transaction?

A. Yes sir.

Q. Did that representation form an essential basis for your own vote as a director in authorizing it?

A. It was a very important factor in me deciding personally how I would vote on the matter.

Q. Do you know whether or not the Board of Directors or Executive Committee would have approved this transaction unless that representation were made?

A. It is very doubtful if it would have been approved because Mr. Hockenbeamer stated on many different occasions that he would not recommend,

(Testimony of P. M. Downing.)

but would oppose any consolidation if it took control of Pacific Gas and Electric affairs from San Francisco and transferred them East.

Q. Did other members of the Board of Directors express their views on the same subject?

A. Yes sir.

Q. And what views were expressed?

A. Mr. Frank B. Anderson, who at the time was a member of the Board, was very definite in his position that the management of the company should remain in San Francisco. Similar expressions came from other members of the Executive Committee, Mr. Chickering, Mr. Miller and, in fact, everyone. I don't think there was a single man who would have favored [124] the consolidation if it had been known or had been thought that the control of Pacific Gas affairs might be transferred to New York.

Q. Had the matter of this acquisition been discussed over a considerable period by the Board and by the Executive Committee before it was finally consummated? A. Yes sir.

Q. Do you know approximately how long these negotiations had continued, I mean, the ones that led up to the transaction?

A. I don't recall exactly, but I would say it was a matter of two or three months.

Q. After this transaction n 1930 was there any change of any kind in the management or policies of the company? A. None whatever.

(Testimony of P. M. Downing.)

Q. Continued exactly as before, did it?

A. As it had always been.

Q. After Mr. Black became president of the company in 1935 was there any change in any of the management policies of the company which had theretofore existed? A. No.

Q. Has your authority been restricted or circumscribed in any way since the election of Mr. Black?

A. No; to the contrary I might say it has been [125] increased somewhat.

Q. Has the authority of any of the officers of the company been either altered or restricted since the advent of Mr. Black?

A. None have been restricted.

Q. And if there has been an alteration it has been in the direction of enlargement rather than restriction, is that correct? A. Yes, correct.

Q. During the period from 1930 to date, Mr. Downing, have you observed anything which would indicate the exercise of any control or influence by the North American over the affairs, management, or policies of the Pacific Gas and Electric Company? A. No, absolutely nothing.

Q. Has the Pacific Gas and Electric Company ever exchanged operating information such as steam generating plant efficiency ratios and so forth with the North American Company or any of its subsidiary or affiliated companies?

A. No.

(Testimony of P. M. Downing.)

Q. Has any Pacific Gas and Electric officer or employee ever attended any meeting of the so-called Station Advisory Council of the North American Company or any other council or committee of the North American Company?

A. No, none at all. [126]

Q. Has the Pacific Gas and Electric Company ever had any contract or arrangement with the North American Company for the rendering of management service, legal, accounting, or any other similar service? A. None whatever.

Q. Has the Pacific Gas and Electric Company ever loaned any money to the North American Company? A. No.

Q. Has the Pacific Gas and Electric Company ever borrowed any money from the North American Company? A. No.

Mr. Phleger: I think that is all, Miss Calkin.

The Examiner: Do you want a short recess or are you ready to proceed with your cross examination?

Miss Calkin: It is 10:30. I will start.

The Examiner: All right, if you are ready, go ahead. Cross examine.

Cross Examination

By Miss Calkin:

Q. Do you know whether or not Mr. Martin and Mr. de Sabla, about whom you spoke yesterday, were some of the original incorporators of the Ap-

(Testimony of P. M. Downing.)

plicant? By the "Applicant" I mean the Pacific Gas and Electric Company.

A. Yes, I think they were the original incorporators.

Mr. Bosley: May I interrupt just a moment? [127]

I think if you will examine the original articles of incorporation that you will not find—I am not quite certain about it—but they were—

The Witness (Interposing): Very active.

Mr. Bosley: They were the ones who were primarily interested.

Mr. Phleger: Off the record.

The Examiner: Off the record.

(Discussion outside the record.)

Mr. Phleger: We are going to introduce shortly the original articles of incorporation.

Miss Calkin: I am not so much interested in who actually incorporated the company as who was primarily interested in it.

The Witness: They were very actively interested.

By Miss Calkin:

Q. Now, who are the other personalities in the Applicant's history during its most early days?

A. Well, Messrs. Martin and de Sabla were the two most active men. In the early day affairs of the company they incorporated these smaller companies and brought them together.

The Examiner: You meant, did you, at the in-

(Testimony of P. M. Downing.)

ception of the smaller companies which were the predecessors?

Miss Calkin: I am speaking only of the Applicant now. [128]

By Miss Calkin:

Q. From 1905 to 1910 who would you say were the major personalities in the Applicant's business?

A. Well, those two men were the moving spirits.

The Examiner: That is at the time of the organization of the original small companies, also at the time the Pacific Gas and Electric was incorporated in 19—what does that chart show—1905?

Mr. Gerdes: Off the record.

The Examiner: Off the record.

(Discussion outside the record.)

The Examiner: Did you understand that?

The Witness: I went back a little too far. Your question went from 1905 to 1910?

By Miss Calkin:

Q. Along that period.

A. Mr. Frank Drum was president of the company then, and I would say that he was the most important figure during that five year period which you have mentioned, although Messrs. Martin and de Sabla were also—

Q. (interposing) They continued to be—

A. (interposing) They continued active, but were less active because Mr. Drum was president at that time.

(Testimony of P. M. Downing.)

Q. Were you acquainted with Mr. Drum prior to 1905? A. With Mr. Drum? [129]

Q. Yes. A. No.

Q. Did you later hear what his business was? What connections did he have prior to the time he became president of the Applicant, if you know?

A. Well, he represented the Haggin & Tevis interests. They had large land holdings in the San Joaquin Valley.

Q. And were they some of the early owners of securities of the Applicant?

A. I understand they were large owners of the company securities.

Q. I have before me a list of the incorporators of the Applicant and I wish you would tell me what interests these various persons represent, if you know.

Garret W. McEnerney?

A. Mr. McEnerney is an attorney here in San Francisco who had considerable to do with the incorporation, I understand, of the P. G. & E. I don't know how much financial interest he had in the company at that time.

Q. John S. Drum?

A. He was a brother of Mr. Frank Drum.

Q. Was he a resident of the City of San Francisco? A. Yes sir.

Q. John A. Britton?

A. John A. Britton was president of California Gas & [130] Electric Corporation. Prior to the

(Testimony of P. M. Downing.)

time that he went with the corporation he had spent the greater part of his life with the Oakland Gas Light & Heat Company.

Q. Cyrus Pierce?

A. Cyrus Pierce at that time was an investment banker here in San Francisco.

Q. Did he later become associated with the firm of Pierce-Fair & Company? Is that the same Pierce?

A. That is the same man, yes.

Q. Carl Taylor?

A. I don't know Carl Taylor.

The Examiner: Off the record.

(Discussion outside the record.)

Mr. Bosley: Mr. Carl Taylor was a young lawyer associated with F. W. M. Cutcheon who was a prominent lawyer in New York and who was the advisor and attorney for N. W. Halsey & Company. Mr. Carl Taylor came out here to San Francisco and was here throughout the negotiations between the representatives of the California Gas & Electric Corporation and the representatives of San Francisco Gas & Electric Company, which were carried on from sometime early in 1905, I think in the spring of 1905 until option agreements were finally reached sometime in the autumn of 1905.

Mr. Carl W. Taylor did much of the legal work for N. W. Halsey & Company and Mr. Cutcheon came here on several [131] occasions, but Mr. Carl

(Testimony of P. M. Downing.)

Taylor was here as the local representative of Mr. Cutcheon in all of the legal proceedings which resulted in the organization of the Pacific Gas and Electric Company and its acquisition of the stock of the California Gas & Electric Corporation and the stock of the San Francisco Gas & Electric Company at or about the end of 1905 or the beginning of 1906. I think the stock of the San Francisco Gas & Electric Company, 90 per cent of it or more, something more than 90 per cent was actually transferred to the Pacific Gas, I think, the second of January, and it was at the beginning of the year that the Stock of the California Gas & Electric Corporation had been transferred to the Pacific Gas and Electric Company, a little bit earlier, sometime in December, I think it was.

The Examiner: You say the interest that he represented was Halsey & Co., that is the investment banker?

Mr. Bosley: F. W. M. Cutcheon was the New York counsel for N. W. Halsey & Co., and Carl Taylor was out here acting under his direction and as his representative as counsel for N. W. Halsey & Co.

The Examiner: All right.

By Miss Calkin:

Q. Mr. Downing, did you know George K. Weeks? A. Yes.

Q. Who was he? [132]

(Testimony of P. M. Downing.)

A. He was the San Francisco representative of some concern; I have forgotten now.

Mr. Bosley: He was with N. W. Halsey & Co. George K. Weeks and Cyrus Pierce and George Lewis were all in the employ of N. W. Halsey & Co., at the San Francisco office of N. W. Halsey & Co.

By Miss Calkin:

Q. Mr. Downing, did you know Frank D. Stringham? A. No, I didn't know him.

Q. You don't know now who he was?

Mr. Bosley: I can tell you about him.

A. Mr. Bosley can probably tell you; I don't know him. I don't know what his business was.

Mr. Bosley: Frank D. Stringham was a young lawyer here. He was doing some work for N. W. Halsey at that time.

By Miss Calkin:

Q. Who was Merrill O. Evans, or Merrill O. Evans, Jr.? A. (No response)

Mr. Bosley: I don't know him. I think he was connected with the office of Halsey & Co.

By Miss Calkin:

Q. Did you know Mr. Alexander N. Kemp?

A. Alexander N. Kemp? Yes sir.

Q. What was his business?

A. I don't know. [133]

Mr. Bosley: He was with Halsey & Co. at that time.

(Testimony of P. M. Downing.)

By Miss Calkins:

Q. Did you know Mr. Challen R. Parker?

A. No, I didn't know him.

Miss Calkin: Do you know who he was, Mr. Bosley?

Mr. Bosley: I am not quite certain. I think he was connected with Halsey & Co.

Miss Calkin: The last one is L. Foster Young.

Mr. Bosley. He was a clerk in Mr. McEnerney's office. I may add Mr. McEnerney at that time was general counsel for California Gas & Electric Corporation and had been for some years.

By Miss Calkin:

Q. Mr. Downing, you testified that the applicant purchased the properties of the California Telephone & Light Company. Does the Applicant still own and operate the telephone properties that were taken over at the time of that acquisition?

A. No; the telephone properties we afterwards sold to Pacific Telephone & Telegraph Company.

Q. Do you know whether or not the various properties that were acquired by the Applicant were set up on its books at the same figure as they were carried on the books of the acquired company?

Mr. Phleger: May I suggest that you defer that [134] question until the comptroller gets on because he is prepared on that.

Miss Calkin: Yes.

(Testimony of P. M. Downing.)

By Miss Calkin:

Q. Mr. Downing, do you know why the negotiations, which you testified took place in 1922 in reference to the proposed acquisition of the securities of Western Power Corporation, were not consummated? A. No, I do not.

Q. Those were carried on by Mr. Creed?

A. Yes sir.

Q. Representing the Applicant?

A. Yes, Mr. Creed.

Why were the properties of the San Joaquin Light & Power Corporation and the Midland Counties Public Service Corporation, or the securities of those companies acquired in 1930 inasmuch as those properties were not in competition with the Applicant and there were not the same reasons, as I understand it, for the acquisition of those properties as there were for the acquisition of the properties operated by the Great Western Power Company of California?

A. I don't know that I could answer that question.

Q. Do you know whether or not there was any attempt to acquire only the securities of the Great Western Power Company of California in 1930?

[135]

A. No; I didn't sit in on those negotiations, but in all of the discussions had by the Board and by the Executive Committee, the three properties, that is, the Great Western, the San Joaquin and the Midlands, were all considered together.

(Testimony of P. M. Downing.)

Q. Do your own engineers do the designing work on your power plants and sub-stations?

A. Yes.

Q. And have you not on occasion appointed outside engineers to do such work?

A. No; we have at various times employed consulting engineers to pass upon particular units of work, but I don't know that Pacific Gas has ever had any outside engineering firm do any engineering work for it.

Q. Has the Stone & Webster Engineering Corporation ever done any work for you and your company?

A. Not for Pacific Gas. They did some work for the Great Western Company.

Q. Prior to 1930? A. Yes.

Q. And none of the engineers employed by the subsidiaries of the North American Company have ever worked on any of Applicant's construction projects? A. No.

Q. I believe you testified, Mr. Downing, that you had never corresponded with any of the North American [136] representatives on the Applicant's Board. Have you ever had any correspondence with any representatives of the North American Company?

A. No, I don't recall any correspondence with any of them.

Q. Have you ever had any correspondence with representatives of any of the subsidiaries of the

(Testimony of P. M. Downing.)

North American Company relating to the Applicant's business? A. No.

Q. Would you describe Applicant's operations as those of an integrated public utility system?

A. Yes, I would say they were an integrated system.

Q. The rate reductions which you testified to on your direct examination, Mr. Downing, were they voluntary or involuntary, or partial or both?

A. Some were voluntary; some were the result of negotiations with the Railroad Commission, and some were the result of public hearings held by the Commission.

Q. Compared with the rest of the United States is the rural territory served by the applicant not more densely populated than most agricultural areas?

A. No, I wouldn't say that it is more densely populated. I might say that we have, perhaps, a longer period of the year when we have no rains and the amount of power required for irrigation pumping is probably—per annum [137] is probably greater here than it is in many other places.

Q. Do you have the same rates throughout your territory for electricity and gas?

The Witness: I didn't get that.

The Examiner: Will you read it, please?

(The question referred to was read by the reporter as above recorded.)

(Testimony of P. M. Downing.)

A. No; they are lower in the congested areas than they are in the rural areas.

By Miss Calkin:

Q. What is your rate per mcf. for gas in the City of San Francisco for domestic use for consumers in the first block?

A. Well, now, I am not certain that I can give you that from memory. It is about 65 or 75 cents in the first block.

Q. And what is the rate per kwh. in San Francisco for domestic units for the first 20 kwh.?

A. I don't recall what it is. I am trusting now entirely to memory because we have a large number of rate schedules and I don't attempt to carry them in my head.

Q. That information is obtainable?

A. Oh, yes, indeed.

Q. The organization chart, which, I believe, is Applicant's Exhibit No. 9, that purports to show the [138] organization of your personnel as of the present time? A. Yes.

Q. How many employees approximately does the Applicant have?

A. Something over twelve thousand.

Q. Am I correct in my understanding that yourself, Mr. Wishon, Mr. Foote and Mr. Coghlan regularly attend meetings of the Executive Committee, although yourself and those gentlemen are not members of such committee?

(Testimony of P. M. Downing.)

A. That is correct, yes.

Q. How long has that been the practice?

A. Well, I have sat with the Executive Committee ever since I became vice-president and general manager in 1929. Mr. Foote has, so far as I know, always sat with the Executive Committee. Mr. Coghlan, I think, has sat with them since he became a member of the Board of Directors and likewise Mr. Wishon since he became a member of the Board.

Q. Now, those gentlemen and yourself are not called in by the Executive Committee to discuss a particular problem, but you simply go to Executive Committee meetings whenever the same are held, is that correct?

A. I attend all meetings of the Executive Committee.

Q. Without any special call by the president or any member thereof? A. Yes. [139]

Q. You gentlemen just go to every meeting?

A. Oh, yes, every meeting, yes.

Q. I wish you would explain in a little greater detail than you did on your direct examination the function of the Appropriations Committee. Does that committee have anything to do with your budget?

A. No; the budgets are made up by the various department heads. The Appropriations Committee takes the various requests for authorizations that

(Testimony of P. M. Downing.)

come in from the various divisions and from the various departments and review those to satisfy themselves that they are in order. If any question comes up in the minds of any people of the Appropriations Committee the request for authorization is held up until further information is available.

Q. Mr. Downing, does your company deliver power to other utility companies for use or distribution by them outside of the State of California?

A. There is one company that we sell power to that transmits, I understand, a portion of that power across state lines.

Q. And what company is that?

A. Sierra Pacific Power Company.

Q. Does the Applicant sell power to the California-Oregon Power Company or a company of a similar name?

A. No; we buy power from California-Oregon Power [140] Company.

Q. But you sell no power to them?

A. No.

Q. And the power which you purchase, is that generated in the State of California?

A. I don't know. That company has certain generating plants in California and it has certain generating plants in Oregon. We have no way of telling whether that power is generated in California or in Oregon.

Q. You purchase no power from Sierra Pacific Power Company? A. No.

(Testimony of P. M. Downing.)

Q. Do you purchase power from any other companies whose power lines or transmission lines cross state lines?

The Witness: I didn't get that question.

The Examiner: Will you read it, please?

(The question referred to was read by the reporter as above recorded.)

A. No, we do not.

By Miss Calkin:

Q. Do you have interchange power contracts with any companies?

A. Yes; we have an interchange power contract with the Yosemite National Park. They have a small plant there in the park and when there is an adequate water supply they [141] produce more power than they need for their own use we take the excess. When water is short in the Valley they do not have enough power to supply their own requirements and then they purchase from us.

Q. Is that the only interchange power contract to which the Applicant is a party?

A. Yes sir. I think, however, that in our agreement with the Southern California Edison Company there is an exchange provision, but as a practical matter, we have never delivered any power to the Edison Company; we buy from them.

The Examiner: We will have a short recess at this time if it is convenient.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

[142]

(Testimony of P. M. Downing.)

The Examiner: We will resume the hearing.

Mr. Downing, I understood you to say during the recess that you wanted to make a correction of your testimony.

The Witness: Yes. Perhaps an explanation might be in order. In Applicant's Exhibit No. 11 you will note that Pacific has sold to Southern California Edison Company during the five-year period, 1935 to 1939 both inclusive, a substantial amount of power. That represents sales in an area in the San Joaquin Valley where the Edison Company has for years purchased power from the Pacific Gas and Electric Company for supplying that area, rather than producing it at their own plants.

Under our present agreement with the Edison Company we purchase a substantial amount of power from that company. There is a provision in that agreement also which provides that we may deliver power to them. As a practical matter, the only power that we have sold to them under that agreement is in emergencies. There has been a small amount, I don't know just how much, delivered by Pacific to Edison, but that has been and is, so far as we are concerned, a purchase power contract.

By Miss Calkin:

Q. All of the gas sold by the Applicant is produced within the State of California?

A. Yes. [143]

(Testimony of P. M. Downing.)

Q. And the Applicant does not sell any gas outside of the State of California? A. No.

Q. The Midland Counties Public Service Corporation was a direct subsidiary of the Applicant prior to its dissolution, rather than a subsidiary of the Great Western Power Company of California, is that correct? A. Yes.

Q. Whereas the San Joaquin Light & Power Corporation was a subsidiary of Great Western Power Company of California?

A. No, no; I don't think so.

Q. That was a direct subsidiary of the Applicant also?

The Examiner: Do you understand the question?

By Miss Calkin:

Q. Who owned the stock of the San Joaquin Light & Power Corporation, the Applicant or the Great Western Power Company of California?

A. It was owned by the North American interests. The Western Power Corporation, if I am not mistaken——

Mr. Bosley: I think, if you will permit an interruption—off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record. [144]

By Miss Calkin:

Q. But the Napa Valley Electric Company, the Feather River Power Company and the California

(Testimony of P. M. Downing.)

Electric Generating Company were subsidiaries of the Great Western Power Company of California, were they not?

A. Yes, I understand they were.

Q. I notice in the original application that it also listed as a subsidiary of the Great Western Power Company of California the Great Western Power Company. What was the business of the Great Western Power Company?

A. I can't tell you.

Mr. Bosley: I think I might have to answer that for Mr. Downing.

The Great Western Power Company, a California corporation, was the predecessor of the Great Western Power Company of California. The Great Western Power Company, I believe, built the Big Bend plant. It developed much of the properties and for purposes of more advantageously commencing its operations the persons who owned the stock of the Great Western Power Company organized the Great Western Power Company of California and caused it to take over the properties formerly owned by the Great Western Power Company. That was about 1919. The Great Western Power Company of California was simply the successor through the transfer of properties of the Great Western Power Company. [145]

The Great Western Power Company, subsequent to the transfer of its properties to the Great Western Power Company of California, constructed an

(Testimony of P. M. Downing.)

electric transmission line out of certain moneys that were available to it under the provisions of an earlier mortgage, certain moneys that were on deposit with the trustee, so that after this date, which date, which I think was about June of 1919—I am not quite sure of the date—Great Western Power Company owned no property except a transmission line which was operated by Great Western Power Company of California in connection with the properties which the latter had acquired.

That transmission line was transferred to Pacific Gas and Electric Company when Great Western Power Company was dissolved in 1936.

By Miss Calkin:

Q. Does Applicant own any voting securities in any public utility company as defined in the Act other than its ownership of the securities of the Vallejo Electric Light & Power Company?

Mr. Phleger: Mr. Foote has prepared an exhibit on that, at the Commission's request, and it will be introduced through him.

The Examiner: Do you want any portion of Mr. Bosley's previous statement with respect to the acquisition of San [146] Joaquin, Midland and Great Western Power? I think the statement was to the effect, not on the record, that those were all acquired through a deal with the North American Company.

(Testimony of P. M. Downing.)

Miss Calkin: That is in evidence on the contract, but the reason for the question is that I think the statement in the original application is a little misleading. I interpreted it to mean that the San Joaquin Light & Power Corporation was a subsidiary of the Great Western Power Company of California. I now understand it was a subsidiary of the Applicant as of the date of the filing of the original application.

The Examiner: All three of those companies were direct subsidiaries, rather than any of them being indirect.

Miss Calkin: That is correct.

By Miss Calkin:

Q. I believe the amended application shows that the Applicant owns approximately 45 percent of the voting securities of the Vallejo Electric Light & Power Company? Do you know who owns the remaining voting securities of that company?

A. It is owned by the Casper family.

Q. When did the Applicant acquire its holdings in Vallejo?

A. I don't recall the date; a good many years ago.

Q. Were they purchased from the Casper family, or do you know how they were acquired? [147]

A. Some members of the Casper family had owned Vallejo stock and exchanged that stock for Pacific Electric stock.

Q. Do you know why the present interest of the Applicant in Vallejo was acquired?

(Testimony of P. M. Downing.)

A. It was purchased by the father of the present president of the Vallejo Company. K. Casper acquired that property many years ago, 40 years ago, perhaps.

Q. I mean, why did the Applicant, Pacific Gas and Electric Company, acquire its present interest in Vallejo?

A. There was some controversy among the members of the Casper family and some of them wanted to exchange their Vallejo stock for Pacific stock, preferring to have Pacific stock rather than Vallejo.

Q. Do you know why the Applicant was interested in making that exchange and acquiring——

A. (interposing) No, I do not.

Q. You don't know under whose presidency that acquisition was made?

A. I think it was under Mr. Hockenbeamer's presidency.

Q. You had nothing to do with it personally?

A. No.

Q. What is the operating territory of the Vallejo Electric Light & Power Company?

A. The City of Vallejo. Perhaps there may be a [148] slight amount of suburban territory, but primarily the City of Vallejo.

Q. Approximately how many customers does that company have? A. I don't know.

Q. Can you give me the approximate population of the City of Vallejo?

(Testimony of P. M. Downing.)

A. My guess would be that Vallejo has a population of 35,000 or 40,000.

Q. Is that the only electric utility company operating in that vicinity, in that city?

A. No. We handle some power for the Mare Island Navy Yard which, I understand, is within the corporate limits of the city.

Q. Is all of the power distributed by the Vallejo Electric Light & Power Company purchased from the Applicant? A. Yes.

Q. It has no generating facilities? A. No.

Q. What generally does the physical assets of the Vallejo Electric Light & Power Company consist of? A. Physical assets?

Q. Yes—property and plant.

A. The distribution system, electric distribution system, in the City of Vallejo. [149]

Q. What representation does the Applicant have on Vallejo's Board?

A. We have two members on the Board.

Q. How many members are on the Board?

A. Five.

Q. Two out of five? A. Yes.

Q. Has that representation been the same since the Applicant's interest was substantially what it is now? A. Yes, I think that it has.

Q. In other words, you have never, the Applicant has never had more than two members on Vallejo's Board of Directors?

(Testimony of P. M. Downing.)

A. Never more than two; no.

Q. Do you know what interests the other members of Vallejo's Board represent?

A. No, I do not.

Q. Do you know who is in charge of the operations of the Vallejo Company?

A. Yes. Dr. Casper is president and the operating head.

Q. He devotes all of his time to the business of the company?

A. I understand that he does; yes.

Q. Does the Applicant render any services, supervisory or otherwise, to the Vallejo Company? [150]

A. No supervisory service although, at the request of the Vallejo Company, we did do the engineering and the construction work on a sub-station which was recently built for the Vallejo Company.

Q. Was that done at cost to the Applicant?

A. Practically cost, yes.

Q. Are there any contractual arrangements, other than the one relating to the sale of power by Applicant to Vallejo, between those two companies?

A. No management contracts whatever, no?

Q. Are there any other contracts?

A. We may have a contract covering the purchase and sale of power. I don't recall just how that stands now, whether there is a contract there or whether they are buying on our regular schedule.

(Testimony of P. M. Downing.)

Q. Does your Division Manager, who is in charge of the territory in which Vallejo is located, have any contacts with the management of Vallejo?

A. No, except indirectly. Pacific Gas distributes gas in Vallejo, but the Vallejo Company distributes electricity which that company purchases from us. But we have an office in Vallejo and we own and operate the gas distribution system in that town.

Q. Do your representatives exchange operating ideas and information with the management of Vallejo? [151] A. No, no.

Q. Could you give me a detailed description of the nature and extent of the contracts between Applicant's personnel and the representatives of the Vallejo Company?

A. I would say we have no direct contacts, except perhaps some local contact there, we being in the distribution of gas and they being in the distribution of electricity.

Q. Who—I believe you testified to this on your direct examination but I have forgotten—who represents the Applicant on Vallejo's Board?

A. Mr. Coghlan and Mr. Straub.

Q. What position does Mr. Straub occupy with the Applicant? A. General Attorney.

Mr. Phleger: Mr. Coghlan is going to testify later on.

By Miss Calkin:

Q. Is Mr. Straub an attorney in the City of San Francisco?

(Testimony of P. M. Downing.)

A. Yes. He is regularly employed by the Pacific Gas and Electric Company.

Q. The Applicant has had only four presidents during its corporate history? A. Yes.

Q. Would you say that Mr. Drum, as president, represented primarily his own interests in the Applicant at the [152] time he became its president?

A. Yes, except that I think he represented other California interests as well as his own.

Q. What interests, if any, did Mr. Creed represent?

A. Mr. Creed was a California man. I don't know just how much interest he may personally have had in the company.

Q. Do you know who recommended or sponsored his election?

A. No. I understand, however, that Mr. Drum was the man who——

Q. (interposing) Did Mr. Drum retire?

A. Mr. Drum retired on account of ill health; yes.

Q. Is it your understanding that he named Mr. Creed as his successor, or recommended him to the Board?

A. I understand so, although I wasn't on the Board then and can't speak from first hand knowledge.

Q. What do you know about who recommended or sponsored Mr. Hockenbeamer for the presidency of the company on the death of Mr. Creed?

(Testimony of P. M. Downing.)

A. I don't know about that.

Q. Mr. Creed died in office? A. Yes.

Q. And no one ever told you who was primarily responsible for the election of Mr. Hockenbeamer as president? [153]

A. No. I don't know that I ever heard of it.

Q. I believe you testified that Mr. Hockenbeamer was associated with N. W. Halsey & Co. prior to his becoming an employee of the Applicant in 1907?

A. Yes, prior to his coming to California.

Q. N. W. Halsey & Co. was engaged in what business? A. Investment bankers.

Q. Could that company properly be described as the first banker for the Applicant?

A. They did considerable financing for the company during the early days. I don't know whether they were the first or not.

Q. Did you become acquainted with Mr. Hockenbeamer shortly after he became an employee of the Applicant? A. Yes.

Q. And Mr. Hockenbeamer was Controller and Vice-President?

A. I think his first title was Vice-President and Controller.

Q. And he remained in that position from 1907 until his election as president of the Applicant in 1927?

A. Yes. He had those responsibilities. I don't know that his title was changed, but he was Vice-

(Testimony of P. M. Downing.)

President right up until the time he was elected President.

Q. Who were the other dominant persons in Applicant's [154] organization during the period of Mr. Drum's presidency?

A. Well, I would have to look over the list to see just who were on the Board at that time.

Mr. Britton was Vice-President and General Manager and was an important factor in company affairs.

Q. When did Mr. Britton cease to occupy that position?

A. At the time of his death in about 1923.

Q. And you succeeded to his position?

A. No.

Q. You did in 1927?

A. Mr. F. A. Leach was Vice-President and General Manager from the date of Mr. Britton's death up until I took over that position in 1929.

Q. Did Mr. Leach continue after that time with the company? A. No, Mr. Leach retired.

Q. Who were the dominant figures in Applicant's organization during Mr. Hockenbeamer's presidency?

A. Mr. Hockenbeamer was President. Mr. C. O. G. Miller was on the Board, Mr. Allen Chickering, Mr. Livermore, Mr. John D. McKee——

Q. (interposing) You are now listing the Directors, but what individuals were most active in determining the policies and most dominant in the

(Testimony of P. M. Downing.)

affairs of the Applicant during Mr. Hockenbeamer's presidency? [155]

A. Mr. Hockenbeamer himself had more to say in connection with the formulation of the company's policies than anyone else.

Q. Could you describe Mr. Hockenbeamer's personality, his outstanding characteristics in the particular phase of utility work for which he was most adapted?

A. Mr. Hockenbeamer was essentially a finance man. He had devoted a great deal of his time to financial matters and not so much to the physical or operating end of the company's affairs.

Q. I believe you testified that you did not participate in the negotiations culminating in the Applicant's acquisition of the subsidiaries of the Western Power Corporation?

A. No, I did not sit in with Mr. Hockenbeamer when those negotiations were being carried on.

Q. But Mr. Hockenbeamer did consult with you concerning the advisability of the transaction?

A. Yes; on many occasions he discussed with me what was being discussed with the representatives of the North American Company.

Q. With whom, if you know, did Mr. Hockenbeamer carry on the negotiations?

A. Primarily with Mr. Black.

Q. Were any other representatives of the North American Company in California connected with those negotiations [156] that you know of?

(Testimony of P. M. Downing.)

A. None that I know of.

Q. Do you know who first proposed the Applicant's acquisition of these subsidiaries?

A. No, I don't know who made the original suggestion. The matter of consolidating the companies had been discussed at various times over a period of years, but I don't know who did make the final suggestion which led up to the consolidation.

Q. Which company, in your opinion, that is, the Applicant or Western Power Corporation, was most anxious to consummate the deal?

A. Well, I think they were both rather anxious to consummate the deal.

Q. Did you consider the transaction advantageous to the North American Company as well as to the Applicant?

A. Yes. I think it was advantageous to everyone.

Q. Did Mr. Hockenbeamer keep the Board informed as to the various terms of the negotiations and obtain their advice thereon, or were the negotiations pretty largely left up to Mr. Hockenbeamer's discretion?

A. No. Mr. Hockenbeamer discussed the progress of his negotiations on many occasions, both with the Board and with the Executive Committee; although he handled personally the details of those negotiations? [157]

Q. Mr. Hockenbeamer, so far as you know, was the only representative of the Applicant which car-

(Testimony of P. M. Downing.)

ried on the negotiations directly with the North American people?

A. Yes, I think that he was.

Q. Were you a member of the Applicant's Board when the Standard Gas & Electric Company acquired a large block of its common stock?

A. No.

Q. Did you ever hear Mr. Hockenbeamer, or anyone else, say that the Standard Gas & Electric Company was required to give a written assurance as to its participation in the Applicant's affairs and the disposal of its stock?

A. No. I don't know anything about that.

Q. You know nothing about the arrangement made at the time Standard Gas & Electric Company acquired a large block of Applicant's stock respecting the future participation of the Standard Gas & Electric Company in the affairs of the Applicant?

A. No, I don't know anything about that.

Q. Did you ever hear any discussion by anyone concerning whether North American would be required to give the same assurances to the Applicant as Standard Gas & Electric Company was required to give?

A. No. I don't know just what assurance, if any, North American might have given, although I have testified [158] it was definitely understood by the representatives of Pacific Gas and Electric Company that there would be no authority exercised by North American over Pacific's management.

(Testimony of P. M. Downing.)

Q. But you know nothing about North American's refusal, at the time it acquired a large block of Applicant's stock, to give a written assurance that it would not participate in the Applicant's affairs?

A. No, I don't know anything about that.

Mr. Phleger: That question assumes a matter not in evidence. I move that it be stricken.

The Examiner: Read the question, please.

Miss Calkin: I will be able to connect it up later. You can strike it at this time if you want to.

The Examiner: Subject to the possibility of it being connected up, I will reserve my ruling on the motion.

By Miss Calkin:

Q. You realized, did you not, that upon the consummation of the transaction proposed in 1930 that North American would be by far the largest single stockholder of the Applicant?

A. Yes, I knew that.

Q. Were you and other Board members not apprehensive concerning the possible attempt by North American to dominate the affairs of the Applicant?

A. Well, we were given to understand that there would [159] be no interference by North American.

Q. But your understanding in that respect was only what Mr. Hockenbeamer told you that the North American representatives had told him?

A. Yes.

(Testimony of P. M. Downing.)

Q. So far as you know, no member of North American's Board, or no representative of that company, appeared before either your Board or your Executive Committee and gave you any formal assurance as to the future participation or non-participation of North American in Pacific affairs?

A. No, I don't think anyone ever appeared before the Executive Committee or the Board.

Q. And the contract between the Western Power or the North American Company and the Applicant, which has been introduced in evidence as Applicant's Exhibit No. 6, so far as you know constitutes the only written agreement entered into between the parties in connection with the acquisition of the securities of the Western Power Corporation's subsidiaries? A. That is correct.

Q. You knew at that time, did you not, Mr. Downing, that North American was one of the largest holding companies controlling several large operating utility companies, did you not?

A. Yes, I knew that.

Q. But you, as a Board member of the Applicant, still [160] thought that it was unnecessary to provide any written safeguards against future domination of the Applicant by the North American Company?

A. I thought the word of the North American officers was sufficient.

Q. And you say the possibility of future domination by North American was a subject of much dis-

(Testimony of P. M. Downing.)

cussion before your Board of Directors and before the Executive Committee? A. Yes.

Q. And Mr. Hockenbeamer assured both the Board and the Executive Committee that the North American representatives would not attempt to influence the operations of the company?

A. Yes.

Q. Did you ever talk to Mr. Black concerning North American's participation in the affairs of the Applicant prior to the consummation of this deal?

A. No.

Q. What do you know about the understanding, if any there was, between North American and the Applicant prior to the time the transaction that we have been talking about was consummated, to the effect that North American would be entitled to a certain number of directors on the Applicant's Board?

A. I think that was probably mentioned at some of the discussions had by the Board of Directors during the progress of these negotiations. [161]

Q. Well, what was the understanding as to how many directors of the Applicant should be selected by North American?

A. You mean as to the number?

Q. Yes.

A. I don't recall. With the number of shares of stock which it was proposed to give to North American in exchange for the stock of these subsidiaries, they would be entitled to a certain number of direc-

(Testimony of P. M. Downing.)

tors and it was assumed by myself and others that they would have the number of representatives on the Board to which they were entitled.

Q. Do you mean that in your opinion the holding of a certain definite number of shares entitles a particular stockholder to elect a certain number of directors?

A. If he has the required number of votes and wants to exercise the right.

Q. What other stockholders of the Applicant have representation on the Board of Directors by virtue of their ownership of a particular number of shares of the Applicant's stock?

A. I don't know of any.

Q. The Standard Gas & Electric Company is your second largest stockholder, is it not?

A. They are the second largest stockholder, I think.

Q. Does it have any representation on your Board at [162] the present time?

A. No, I don't think it does.

Q. The Sun Life Assurance Company of Canada owns a substantial block of both the preferred and common stock of your company, does it not, Mr. Downing? A. Yes.

Q. Does that company have any representation on your Board? A. No.

Q. Who, if anyone, represents the Pacific Lighting Corporation on your Board of Directors?

A. Mr. C. O. G. Miller is an officer of the Pacific

(Testimony of P. M. Downing.)

Lighting Corporation. He is also a substantial stockholder in his own right.

Q. That company is the third largest holder of your common stock, is it not?

A. I think that it is, yes.

Q. Do you know whether or not the American Super Power Corporation has any representation on your Board of Directors?

A. No, it has not.

Q. What about the Travelers Insurance Company?

A. No; they have no representation.

Q. Who are presently North American's representatives on your Board of Directors?

A. Mr. Fogarty and Mr. Freeman. [163]

Q. Has North American ever had more than two representatives on your Board?

A. I don't recall whether they have or not.

Q. Has North American ever had any representation on your Executive Committee? A. No.

Mr. Bosley: Just a moment. I think——

The Witness (interposing): I will correct that. Mr. Guy Earl was on the Executive Committee.

By Miss Calkin:

Q. What was Mr. Earl's position prior to 1930?

A. I understand that he was president of the Great Western Power Company.

Q. Upon the consummation of this transaction did Mr. Earl become an employee of the Applicant as well as a member of its Board?

(Testimony of P. M. Downing.)

A. No, not an employee of the Applicant.

Q. In other words, Mr. Earl was never an officer or a full time employee of the Applicant?

A. No.

Q. But a member of its Executive Committee and a Director during his lifetime?

A. That is correct.

Q. Did Mr. Hockenbeamer acquaint the Board with any understanding or agreement that he entered into with representatives of the North American Company relative to its future [164] representation on Applicant's Board and Executive Committee?

The Witness: I didn't get the question.

The Examiner: Read the question.

(The question referred to was read by the reporter as above recorded.)

A. It was discussed at the various Board meetings and it was understood that the North American Company would have representation on the Board if they elected to have such representation.

By Miss Calkin:

Q. Do you know what representation it was understood North American would be entitled to?

A. No, I don't recall any understanding.

The Examiner: Do you remember what, if anything, Mr. Hockenbeamer told the Board about discussions he had with representatives of the North American?

(Testimony of P. M. Downing.)

The Witness: No, I do not. I remember distinctly discussions having taken place as to the number of directors which the stock owned by the North American Company would entitle them to have if they elected to have representation on the Board.

By Miss Calkin:

Q. Do you recall the resignation of any members of your Board shortly after the consummation of the transaction to make way for the election of representatives of the North [165] American Company? A. No, I do not.

Q. Did you know Mr. Charles L. Barrett?

A. Yes.

Q. Do you know why he resigned?

A. No, I don't recall. He was an employee of the company.

Q. If he resigned on June 18, 1930 and Mr. Gruhl was elected on the same date, would it be your opinion that he resigned to make way for the election of Mr. Gruhl?

A. Yes, I think that would probably be a proper conclusion to draw.

Q. Did you know Mr. D-o-h-r-m-a-n-n?

A. Yes.

Q. Do you recall why he resigned?

A. No, I do not.

The Examiner: Are you going to proceed along some other line now, Miss Calkin?

Miss Calkin: I am going on with this for a few minutes more.

(Testimony of P. M. Downing.)

The Examiner: Will you come to a convenient place to stop in a few minutes, you think?

Miss Calkin: Yes.

By Miss Calkin:

Q. Do you know who, on behalf of the Applicant, entered [166] into the understanding, which there apparently was, between the Applicant and North American regarding representation on Applicant's Board by North American people?

A. No, I do not.

Q. That arrangement was not incorporated into the written agreement which was entered into between the parties, was it?

A. I don't recall, although I haven't read that agreement for years.

Mr. Bosley: The agreement is in evidence, isn't it?

Miss Calkin: That is correct.

The Examiner: It is Applicant's Exhibit No. 6, I believe.

By Miss Calkin:

Q. Does North American now have any representation on Applicant's Executive Committee?

A. No.

Q. Do you know whether it is entitled to such representation by virtue of the understanding had in 1930? A. No, I do not.

Q. And do you know why it has no representa-

(Testimony of P. M. Downing.)

tion on Applicant's Executive Committee at the present time? A. No, I do not.

Q. No one has ever discussed that matter with you? A. No.

Q. Has anyone representing North American ever told [167] you that its representation on Applicant's Board is not as important since Mr. Black has been president of the Applicant as it was during Mr. Hockenbeamer's lifetime?

A. No. I never heard anything of that kind.

Q. Do you consider Mr. Black as a representative of North American's interests on Applicant's Board? A. No, I do not.

Q. Have you ever so considered him since his election as president of the Applicant?

A. No, I have not.

Q. Mr. Black was a representative of North American on Applicant's Board for a period of time prior to the election as president of the Applicant, was he not? A. Yes.

Q. How frequently during that period, that is, prior to November 20, 1935, did Mr. Black attend meetings of the Board?

A. Well, I don't recall of his attending any meetings. He may have attended a few, but I don't recall any.

Mr. Bosley: I think Mr. Foote will give the company's record of the attendance, Miss Calkin.

(Testimony of P. M. Downing.)

By Miss Calkin:

Q. Do you know why Mr. Palmer was elected as a Director of the Applicant?

A. I presume there was a vacancy on the Board and [168] Mr. Palmer was selected to fill that position.

Q. Do you know whether or not, prior to the selection of Mr. Palmer, North American was requested to relinquish its right to a third representative on Applicant's Board in order to permit Mr. Palmer's election? A. No, I do not.

Q. Mr. Black never discussed that matter with you? A. No.

Miss Calkin: I think this is a good stopping place.

The Examiner: We will recess until 2:00 o'clock.

(Whereupon at 12:10 o'clock p. m. a recess was taken to 2:00 o'clock p. m. of the same day.) [169]

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p. m.)

The Examiner: Are you ready to resume your cross examination?

Miss Calkin: Yes.

The Examiner: The hearing will be resumed.

(Testimony of P. M. Downing.)

Whereupon—

P. M. DOWNING

was produced as a witness for and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Cross Examination (Resumed)

By Miss Calkin:

Q. At whose suggestion was North American given a certain number of representatives on Applicant's Board, if you know, Mr. Downing?

A. I don't know.

Q. You don't know whether it was at Mr. Hockenbeamer's suggestion?

A. No, I don't know of any understanding had between North American and Pacific Gas regarding representation.

Q. Do you know whether or not their representation on the Board was a condition precedent to the consummation of the transaction and if representation to North American [170] had been refused the deal would not have been consummated?

A. I don't know.

Q. How and by whom is the Proxy Committee for the annual stockholders meeting of the Applicant selected? A. By the president.

Q. Does the president suggest the names of the Proxy Committee to the Board?

A. As far as I know.

(Testimony of P. M. Downing.)

Q. Well, does the Board select a Proxy Committee, or does the president select a Proxy Committee?

A. Well, I don't recall whether the Board selects them or not.

Q. Do you know who makes up the slate of directors to be voted for by that committee at the stockholders meeting?

A. No; it is generally the same directors; the directors generally succeed themselves.

Q. Do you know how the Applicant is advised as to who North American's representatives on the Board should be? A. No, I do not.

Q. Neither Mr. Fogarty or Mr. Freeman, or anyone connected with North American since 1930 has ever communicated with you and advised you who they wanted selected as their representatives?

A. No.

Q. Would you say that the members of the Board who [171] are also members of the Executive Committee are generally the most active directors of your company other than the directors who are also employees?

A. Well, I don't know that I would say they were more active, that they are more active than the other directors, but I would say the employee directors are just as active as the members, directors who are members of the Executive Committee.

Q. Do the members of the Executive Committee

(Testimony of P. M. Downing.)

receive a fee for attendance at the Executive Committee meetings?

A. Yes. A fee for Executive Committee meetings? Yes.

Q. Do the members of the Executive Committee who are also employees of the company receive a fee? A. Yes.

Q. What is that, the amount of that fee?

A. $20.

Q. And do the directors receive a fee for attendance at directors meetings? A. Yes.

Q. What is that fee? A. $20.

Q. And do the directors who are employees of the company receive a fee for attending directors meetings? A. Yes. [172]

Q. How would you compare the functions of the Board with those of the Executive Committee, Mr. Downing?

A. The functions of the two bodies are similar except that the Executive Committee goes further into detail in acting on matters than the Board does. In other words, there are a great many matters that come before the Executive Committee and are decided without being referred to the entire Board.

Q. Well, is the action of the Executive Committee meeting approved by the Board at its next meeting? A. No.

Q. The Board, as such, does not approve at each

(Testimony of P. M. Downing.)

of its meetings all previous action of the Executive Committee? A. No.

Q. Does Mr. Black ever advise the Board as to recommendations made by the North American Company when he submits matters to it?

A. No, I haven't heard of any report or recommendation by Mr. Black regarding the views or the ideas or the wishes of the North American Company.

Q. You mean during the entire period of Mr. Black's presidency you have never heard him mention at a Board meeting what North American's views were on any particular problem confronting the Applicant?

A. No, I don't know that I ever have; I don't think [173] I ever heard him mention.

Q. Has he ever made such recommendations or ever acquainted the Executive Committee with such recommendations?

A. No, I don't remember of any at all.

Q. Since you have been a director of the Applicant have you ever been advised from any source what North American's wishes were with respect to a particular matter? A. No.

Q. Do you know of any instance where the Board has inquired of Mr. Black whether he had conferred with North American representatives on a major problem and, if so, what suggestions, if any, were made by North American?

(Testimony of P. M. Downing.)

A. No, I don't remember of any instance where any questions have been asked of Mr. Black.

Q. Well, Mr. Downing, do you recall any instance where North American's viewpoint or attitude toward a particular problem confronting the Applicant's Board of Directors was discussed at a Board meeting?

A. No, with possibly one exception. Several years ago the dividend of Pacific Gas was temporarily reduced and some question was raised at that time, I understand, by the North American Company regarding that reduction.

Q. Was that in 1933?

A. It was about that time. I don't recall just what year that reduction was made. It was about that time, [174] though.

Q. Was it at the time the regular dividend of the Applicant on its common stock was reduced from, I believe, it was 8 per cent to——

A. (Interposing) 6.

Q. To 7 in 1933?

Mr. Gerdes: 6.

Mr. Phleger: It was reduced from a quarterly dividend of 50 cents to 37½ cents, or from $2 per annum to $1.50 per annum. It shows 7 per cent because it was reduced in the middle of the year and adding it up it amounted to 7.

Miss Calkin: I see.

(Testimony of P. M. Downing.)

By Miss Calkin:

Q. Well, who conveyed to the Board at that time North American's views on the reduction of dividends?

A. I don't know. I was not present at the meeting when that reduction was made; I was away on vacation.

Q. Well, was North American advised prior to the time the dividends were reduced that the reduction would take place?

A. It is my understanding they were not so advised.

Q. Well, at a subsequent meeting of the Board, that is, a meeting of the Board after the dividend was reduced, was any representative of North American present? A. No; no, I think not. [175]

Q. Well, do you now recall from whom you learned that North American objected to the reduction of such dividends?

A. I think Mr. Hockenbeamer said there was some question raised.

Q. Is that the only instance that you can recall that you, as a director, have ever been advised as to North American's views on any problem which was before the Applicant's Board for consideration? A. That is the only instance, yes.

Q. I believe you said that you were acquainted with Mr. Freeman. A. Mr. Freeman, yes.

Q. You met him in New York?

(Testimony of P. M. Downing.)

A. In New York, yes.

Q. For the first time? A. Yes sir.

Q. And do you usually go to New York a couple of times a year, Mr. Downing?

A. Once or twice a year, yes.

Q. And what is the nature of your business in New York?

A. Generally on vacations or to attend conventions.

Q. Well, when you go to New York is it your custom to call upon the officers of the North American Company? A. Occasionally I do, yes.

[176]

Q. And on those occasions do you discuss with the representatives of the North American Company with whom you confer the problems confronting the Applicant at that particular time?

A. No; any discussions that take place are very casual. Those calls are merely social calls for a few minutes. I drop in and pass the time of day and then leave. They are not business calls and any discussion of business is very, very casual.

Q. Have you ever carried away from such conferences North American's views on problems of the Applicant and later submitted those, acquainted the Board with those views?

A. No, never, never.

Q. Have you, in your capacity as general manager of the company, ever put into force and effect any recommendations made by the representatives

(Testimony of P. M. Downing.)

of North American Company at the conferences you have had with them? A. None whatever.

Q. At those conferences have any representatives of North American Company ever voiced to you a disagreement with certain policies being carried out by the Applicant? A. No.

Q. Have they ever made any suggestions as to changes in the operating or financial policies of the Applicant?

A. No, never have. [177]

Q. Do you recall Mr. Hockenbeamer ever having advised the Board of suggestions which he received from North American? A. No.

Q. On any matters of the Applicant?

A. No, I have no recollection of anything of that kind being discussed.

Q. Was Mr. Black an active Board member from 1930 to 1935? A. No, he was not.

Q. How frequently would you say Mr. Black attended meetings of the Board during that period?

A. Very, very seldom. Right at the moment I don't recall any meetings he ever attended, although he may have attended a few.

Q. During that interval did you confer with Mr. Black when you were in New York?

A. I may have passed—I may have dropped in and paid my respects and passed the time of day, but the calls were not made for the purpose of discussing business and very little, if any, business discussions took place.

(Testimony of P. M. Downing.)

Q. Did Mr. Black make any recommendations prior to the time he became president of the Applicant regarding the problems, operating matters of the Applicant? A. No, not to me. [178]

Q. Mr. Earl was an active member of the Applicant's Board from 1930 until the date of his death, was he not? A. Yes.

Q. And it was well recognized that he was a representative of North American Company on your Board? A. Yes sir.

Q. Do you know to what extent Mr. Earl kept the North American Company advised as to matters presented at the Board meetings of the Applicant?

A. No. Mr. Earl used to take a great many notes at Board meetings and also at Executive meetings, but just what use he made of those notes I don't know.

Q. Has there ever been any major difference of opinion between the Board and Mr. Black since he became president of the Applicant? A. No.

Q. Has the Board ever disapproved of matters submitted and recommended by Mr. Black since he has been president?

A. No, I don't know of a single instance.

Q. Was the relationship between the Board and Mr. Hockenbeamer at all times harmonious?

A. Yes.

Q. Do you, as a director of the Applicant, feel free to act on any major problem confronting the

(Testimony of P. M. Downing.)

Applicant without ascertaining what North American's reactions to the problem [179] might be?

A. Oh, yes, indeed.

Q. And you can now recall no instance in which you have ever been acquainted with North American's wishes in respect to a particular matter since Mr. Black has been president of the Applicant?

A. No, I recall none.

Q. What persons have you conferred with during the last five years that were employees or representatives of the North American Company?

A. I have seen Mr. Fogarty and Mr. Freeman. Mr. Doolittle, I think, has not been with the North American during the past five years. I don't recall just when he severed his connections with North American.

Q. Are you acquainted with Mr. Harrison Williams? A. No.

Q. You have never met Mr. Williams?

A. I don't know Mr. Williams.

Q. Do you know Mr. Sealey? A. Sealey?

Q. Yes. A. No.

Q. Do you know Mr. Preger? A. No.

Q. Do you know Mr. Hartel? [180]

A. No, I do not.

Q. Do you know Mr. Piske? A. No.

Q. Did you consider Mr. Earl to some degree, at least, a spokesman for North American, while he was a member of your Board?

(Testimony of P. M. Downing.)

A. Well, he was recognized as the North American's representative.

Q. And when he made recommendations to the Board they might well have been recommendations made at the suggestion of North American?

A. They may have been; I don't know.

Q. Who succeeded Mr. Earl as a director of the Applicant? A. I don't recall.

Q. Was Mr. Black considered as a successor to Mr. Earl in the capacity of spokesman for North American?

A. You mean after he became president?

Q. Yes. A. No.

Q. North American's representatives on the Board have been less active under Mr. Black's presidency than they were under Mr. Hockenbeamer, have they not?

A. Well, now, I wouldn't say that. Outside of Mr. Earl the representatives of North American Company have all [181] been very inactive because they have never attended meetings.

Q. Well, Mr. Earl died only a short time before Mr. Black became president, did he not?

A. Yes. I don't recall just when Mr. Earl died. I think, though, it was before Mr. Black became president.

Q. Do you know when Mr. Earl became a director of North American?

Mr. Phleger: You don't mean "North American".

Miss Calkin: I mean of the Applicant.

(Testimony of P. M. Downing.)

A. It was shortly after the consolidation, 1930.

By Miss Calkin:

Q. So Mr. Earl was a member of your Board from approximately the time of the acquisition by the Applicant of the securities of the subsidiaries of Western Power Corporation until the time of his death? A. Yes.

Q. And during that period he was a very active member of the Board, was he not?

A. I wouldn't say that he was any more active than any of the other directors.

Q. Well, he attended with a fair degree of regularity, did he not? A. Yes, he did.

Q. And since Mr. Earl's death there has been no representative of the North American Company who has attended [182] meetings of the Board with anything like the degree of regularity that Mr. Earl attended such meetings, has there?

A. No, there have not been.

Q. Mr. Downing, who did you first hear suggest Mr. Black as Mr. Hockenbeamer's successor?

A. The suggestions was made to me by Mr. C. O. G. Miller and Mr. Fred Elsey.

Q. You were not then a member of the Executive Committee of the Applicant?

A. No; I have never been a member of the Executive Committee.

Miss Calkin: Off the record.

The Examiner: Off the record.

(Discussion outside the record.)

(Testimony of P. M. Downing.)

By Miss Calkin:

Q. What did Mr. Miller and Mr. Elsey say to you in connection with Mr. Black's consideration for the presidency of the Applicant?

A. They told me that they thought Mr. Black was the logical man for the presidency.

Q. Do you know whether or not at that time they had conferred with Mr. Black and ascertained whether or not he would accept the position if it was offered to him?

A. No, I was not told whether they had conferred with him or not. [183]

Q. Did they tell you that they had talked to any other members of the Board prior to the time they had talked to you? A. Yes.

Q. And did they tell you what the reaction of the other members was to their suggestion?

A. Yes, they said that the other members of the Board were in favor of Mr. Black.

Q. Did the Executive Committee consider Mr. Black's selection prior to the time his selection was considered by the Board, if you know?

A. No, I think not, not in the meetings of the Executive Committee.

Q. Do you know who advised Mr. Black that he was being considered for this position?

A. No, I do not.

Q. Did the Board direct any particular member to carry on negotiations with Mr. Black concerning his coming to the Applicant as its president?

(Testimony of P. M. Downing.)

A. No, there was no formal action along that line.

Q. Do you know whether Mr. Black was selected as president prior to the time he left New York and came to San Francisco to accept the position?

A. Yes, he was selected before he left New York.

Q. So that the Board had no personal—no member of [184] the Board resident in San Francisco, to your knowledge, had any personal contacts with Mr. Black prior to the time he was selected as president?

A. So far as I know there were none.

Q. Who at that time, that is, in November of 1935, if you know, were North American's representatives on Applicant's Board?

A. Mr. Fogarty was one. I don't know who the others were at that time.

Q. Did you have any conversations with Mr. Fogarty concerning Mr. Black's selection as president of the Applicant? A. No.

Q. Have you testified as to everything you know concerning the selection of Mr. Black as the president of your company?

A. Well, there is only one thing that might have some bearing on it. At the time of Mr. Hockenbeamer's death I notified all the directors of the company and among others were Mr. Black and Mr. Fogarty, and during the conversation Mr. Fogarty stated to me that I need not have any concern be-

(Testimony of P. M. Downing.)

cause so far as he was concerned I would be his choice for president.

Q. Did you have any further conversations with Mr. Fogarty concerning that matter?

A. No, not until after Mr. Black's election. I [185] happened to mention it very casually one time.

Q. That was after Mr. Black came out here?

A. Yes sir.

Q. Did any director voice a dissent when Mr. Black's name was under consideration for the presidency of the company? A. No.

Q. He was the unanimous selection of the Board? A. Yes sir.

Q. Did Mr. Hockenbeamer die suddenly or was he ill for some period of time prior to his death?

A. No, he was ill only a comparatively short while. He had not been feeling well for some time, but he was at his desk up until a comparatively short time before he died.

Q. So that a possible successor to Mr. Hockenbeamer was not a matter that was under consideration for any great period of time?

A. Oh, no; I am sure nothing of that kind was under consideration. At any rate, I had never heard of it.

Q. Would you say that Mr. Hockenbeamer's death came as a surprise to the members of the Board? A. Yes, very much of a surprise.

(Testimony of P. M. Downing.)

Q. And, I believe, you testified you had no further conversations with Mr. Fogarty concerning your selection as president of the company? [186]

A. No, no.

Q. Was the possibility that Mr. Black, because of his association with North American, might be influenced and dominated by North American considered and discussed by the Board when it was considering his selection?

A. No, no mention was made of that.

Q. Did you personally believe that Mr. Black would not be influenced by North American or did you deem such influence not undesirable at the time you voted for Mr. Black as president of the company?

A. No, I had no thought that he would be influenced by North American.

Q. Before Mr. Black was offered the position of president of the Applicant did you have any assurance from him as to what his future attitude toward North American's suggestions might be?

A. No, none whatever.

Q. To your knowledge, did any member of the Board discuss with Mr. Black what the effect of his prior association would have upon his susceptibility to North American's recommendations?

A. I have no knowledge of any such discussion.

Q. So, as far as you know, the Board was not assured prior to Mr. Black's unanimous election as to what extent he might be guided by North Ameri-

(Testimony of P. M. Downing.)

can in determining future [187] policies of the Applicant? A. No.

Q. Were you then willing that North American take as active a part in Applicant's affairs as it might deem desirable?

A. No, because we were assured by Mr. Hockenbeamer that North American Company would not attempt to dominate the policy of Pacific Gas.

Q. Do you think that it would be possible for North American to exert a very substantial influence over the Applicant's management and policies if it controlled Mr. Black, even though its representatives never attended Board meetings or had any other contacts with the other directors?

Mr. Gerdes: Will you read the question, please?

(The question referred to was read by the reporter.)

A. No, I hardly think so.

By Miss Calkin:

Q. Mr. Black is in active charge of the operations of the Applicant, is he not? A. Yes.

Q. Is every employee of the Applicant ultimately responsible to Mr. Black? A. Yes.

Q. Are there any employees on Applicant's payroll that Mr. Black does not have the authority to employ or [188] discharge?

A. No, none at all.

Q. Do you know of your own personal knowledge the extent of Mr. Black's contacts with North

(Testimony of P. M. Downing.)

American representatives since he has become president? A. No, no, I have no knowledge.

Q. It would be possible for Mr. Black to either seek North American advice or to receive instruction from its representatives on major problems without your knowledge, would it not?

A. Yes, it would.

Q. You would have no way of knowing whether or not, when Mr. Black recommended a matter to the Board for its approval, he had previously conferred with North American representatives and whether his recommendations had been influenced by what they said?

A. No, I would have no means of knowing.

Q. Mr. Black's association with North American people has been much closer than yours has been, has it not, Mr. Downing? A. Yes sir.

Q. Was the fact that the Board felt that North American should play a greater role in Applicant's activities one of the factors in the local directors selecting Mr. Black as Mr. Hockenbeamer's successor? [189]

The Witness: Would you mind reading that, please?

The Examiner: Read the question, please.

(The question referred to was read by the reporter as above recorded.)

A. No, I think not.

(Testimony of P. M. Downing.)

By Miss Calkin:

Q. Well, what were the reasons for Mr. Black's selection?

A. The directors told me they thought that he was the logical man for the place.

Q. Did they give any further reasons?

A. No, I don't know that they did.

Q. Do you have any particular feeling about the desirability of North American's interference with Applicant's management or policies, Mr. Downing?

A. Yes, I would be very much opposed to North American attempting to take any active part in the management of the affairs of Pacific Company.

Q. And why do you feel that way?

A. The company has always been managed by Californians. All decisions as to policy and other matters have been decided right here in San Francisco, and it has been a tradition in the company that the management of Pacific Gas was centered right here in San Francisco.

Q. Do you feel it would be detrimental to the interests [190] of the Applicant if it were controlled by North American Company?

A. I do, yes.

Q. In what respects?

A. I don't like absentee management. I think the management should be centralized right here with men who know local conditions and who are in a much better position to pass on questions of

(Testimony of P. M. Downing.)

policy than could possibly be done by absentee management.

Q. Are you familiar with reports which the Applicant furnishes the North American Company?

A. No.

Q. Do you know whether or not North American is furnished with greater information concerning the Applicant's operations than are other stockholders? A. No, I do not.

Q. Do you know who has charge of furnishing North American with information concerning the Applicant?

A. No; I understand the secretary sends certain reports there, but no reports go out of my office or any of the departments under my general supervision to North American Company.

Q. Do you have anything to do with the formation of the budget? A. Yes. [191]

Q. Can you tell me briefly how that budget is prepared?

A. It starts in our various divisions and in our various departments. They prepare their estimates of expenditures that will have to be made generally for a year, and they are submitted and they are gone over by the management and some additions are made and some deletions are made.

Q. Well, whose department is primarily responsible for the preparation of the budget? Would that be your department or would it be Mr. Hodges' department?

(Testimony of P. M. Downing.)

A. No; it is a matter that comes under the vice-president and general manager. Each division manager makes up his budget and our various department heads make up their budgets. Then, they are all combined in my office and, as I have said, some of the items are deleted and there may be some additions.

Q. Well, then, do you submit a draft of the budget as it clears through your office to the president? A. Yes sir.

Q. Do you know whether or not a copy of the Applicant's proposed budget is submitted to North American for review before it is submitted to the Board for its approval?

A. It is not submitted to my office. I don't know—I don't think that it is, although I can't speak with certainty for Mr. Black's office. [192]

Q. Do you know whether or not North American has ever suggested changes in the proposed budget prior to the time it has been approved by your Board?

A. No; so far as I am concerned I don't know that they have ever seen the budget.

Q. You have been present at Board meetings when the budget was approved?

A. Yes, yes. They come up for general discussion although individual items are seldom discussed at Board meetings.

Q. At the time the budget has been submitted to the Board for approval has anyone ever advised

(Testimony of P. M. Downing.)

the Board that the budget included changes which had been made at the suggestion of North American?

A. No.

Q. Does Mr. Black have authority to expend money for all items included in the budget without further submission of the same to the Board after it has been approved by the Board?

A. No; those estimates originate in the office of the vice-president and general manager, and each week at the meetings of the Executive Committee a list of what we call G.M. Authorizations are submitted to the Board for approval. Those G.M Authorizations cover all expenditures in excess of $500. Expenditures of less than $500 do not have to be [193] approved by the Executive Committee, but all expenditures in excess of $500 go to the Executive Committee, are presented to the Executive Committee by the vice-president and general manager for approval.

Q. And are approved weekly by the Executive Committee? A. Yes.

Q. Does that apply to items which are included in the budget as well as emergency matters?

A. Yes; the budget is purely an estimate and is not an authority to make the expenditures.

Q. In other words, the Executive Committee of your company approves expenditures of all sums for any purpose in excess of $500?

A. Yes, except some maintenance jobs, emergency work, why, they may go ahead.

(Testimony of P. M. Downing.)

Q. The advisability of any major construction project will be considered by the Board and its authorization secured before work was commenced would it not?

A. Yes, by the Executive Committee.

Q. In a Board discussion relating to proposed construction projects has Mr. Black ever advised the Board of North American's views on a proposed job? A. No.

Q. Do you recall Mr. Black ever having recommended [194] any particular matter and at the same time advising the Board that North American had informed him that it was opposed to the same?

A. I have no recollection of a single instance of that kind.

Q. Does the Board either authorize or disapprove major construction proposals without being advised of North American's attitude regarding the same?

A. Oh, yes. I don't know that North American Company is ever mentioned during the consideration of these G.M. Authorizations.

Q. And a G.M. Authorization would include items up to any amount?

A. Any amount, yes.

Q. Is there any limit to the amount of expenditures which you think the Board would be justified in approving without knowledge of North American's viewpoint thereon?

(Testimony of P. M. Downing.)

A. Absolutely, yes, no limit at all to what they might expend.

Q. Has the Board, to your knowledge, ever directed Mr. Black to confer with North American representatives and get its reaction to a particular problem?

A. No, I don't remember of a single instance.

Q. Has the Board ever approved or directed a course of action which it knew was contrary to the wishes of North [195] American?

A. I don't know of any.

Mr. Phleger: Will you read the question and answer, please?

(The question and answer referred to were read by the reporter as above recorded.)

By Miss Calkin:

Q. Have you ever discussed any phase of the Hetch Hetchy situation with North American representatives, Mr. Downing?

A. Oh, it may have been mentioned in a casual sort of way, but not—I have never discussed it officially with them, any of them.

Q. In your discussions with Mr. Fogarty or Mr. Freeman or any representatives of North American regarding Hetch Hetchy, did they ever suggest to you how a particular matter should be handled in connection therewith? A. No.

Q. Has Mr. Fogarty ever expressed his views on the Hetch Hetchy situation to you?

(Testimony of P. M. Downing.)

A. No, I have no recollection of his ever having done so.

Q. Do you know whether or not North American has advised the Applicant with respect to its activities in municipal elections on bond issues to construct a distribution [196] plant for the City of San Francisco?

A. No, I have no knowledge of anything of that kind.

Q. You are familiar with the activities of your company in connection with such municipal elections, are you not? A. Yes, yes.

Q. So far as you know have the activities of the Applicant been independent of any advice from North American?

A. Entirely independent of North Americn.

Q. Did you ever seek Mr. Fogarty's or Mr. Freeman's advice concerning what the Applicant should do in regard to the Hetch Hetchy matter?

A. No, I have not.

Q. Has Mr. Black ever conveyed to you what he stated were North American's viewpoints?

A. No, he has not.

Q. Who recommends the amount of common stock dividends to the Board prior to their declaration by the Board? A. The president.

Q. That was true during Mr. Hockenbeamer's presidency and has been true since Mr. Butler's and Mr. Black's presidency? A. Yes.

(Testimony of P. M. Downing.)

Q. Has Mr. Black ever told the Board at a meeting at which you were present what North American's ideas on the [197] subject of dividends on the common stock were?

A. No, I have never heard it discussed.

Q. Mr. Black, then, has never indicated to the Board that he was familiar with what North American's views as to the amount of stock dividends which the Applicant would be justified in paying were?

A. No, I have no recollection of it ever having been discussed.

Q. To your knowledge has Mr. Fogarty ever acquainted the Board with his ideas of a sound dividend policy for the Applicant? A. No.

Q. Have you, in your discussions with Mr. Fogarty and Mr. Freeman in New York, discussed the subject of dividends?

A. No, I don't think that I ever have.

Q. At whose suggestion were Applicant's dividends on its common stock reduced in 1933?

A. I was not present at the meeting when that reduction was made.

Q. Well, Mr. Hockenbeamer discussed the matter with you prior to the meeting and acquainted you with the fact that he intended to recommend a reduction in the dividend payments?

A. No; on the contrary he told me before I left on this vacation that he thought the regular dividend would be [198] declared.

(Testimony of P. M. Downing.)

Q. Well, did you ever learn who recommended a reduction in the dividend?

A. I heard that Mr. Frank B. Andersen was the one who was in favor of making the reduction.

Q. And the Board adopted his suggestion?

A. Adopted his suggestion.

Q. Was that over Mr. Hockenbeamer's protest?

A. I don't know to what extent he protested, but I do know that shortly before I went away, which was just before the meeting at which this dividend reduction was made, Mr. Hockenbeamer said that he thought the regular dividend would be declared. As a matter of fact, I think I had a letter from him while I was away to the effect that the regular dividend would be declared, but that was before the meeting at which action was taken to reduce the dividend.

Q. Do you recall Mr. Hockenbeamer ever having told you whether or not he had discussed the advisability of a dividend reduction with any representatives of the North American Company at that time?

A. No; he told me that he had not discussed it with them.

Q. And then after your return you learned that the dividend had been reduced?

A. Well, I first learned of it in Los Angeles. I was [199] in the East and I came back through the Canal. I stopped in Los Angeles during the day and I went up to the office of the Southern California Edison Company and they told me there that

(Testimony of P. M. Downing.)

the dividend had been reduced. That is the first knowledge I had of it.

Q. Then, when did you first learn that North American objected to the reduction in dividends?

A. Shortly after I returned home.

Q. And from whom did you learn that?

A. I think Mr. Hockenbeamer told me.

Q. And what did he tell you?

A. He said there was some question raised as to the propriety of making that reduction.

Q. Didn't he say with whom he had talked or communicated?

A. He talked with Mr. Dame; that is my recollection that he told me that he had talked with Mr. Dame over the telephone.

Q. Mr. Dame was then president of the North American Company? A. Yes sir.

Q. And it was your impression that Mr. Dame had objected to the reduction and thought that it was inadvisable?

A. That was my understanding, that he questioned the advisability of the reduction. [200]

Q. Well, did Mr. Hockenbeamer seem inclined to agree with Mr. Dame?

A. No; Mr. Hockenbeamer was willing to go along with the Board.

Q. Now, when were the dividends on your common stock first increased after the 1933 reduction?

A. I can't give you that from memory; I don't

(Testimony of P. M. Downing.)

know right at the moment.

Q. Well, do you recall the discussions which occurred prior to the increase?

A. There was some discussion — I don't remember now—I don't rely on my memory as to whether all dividends after the first increase following this reduction period were on the basis of $2 or whether some were on $2 and then they may have dropped back to $1.50 for a quarter or more, and then went to the $2 again. My mind isn't clear on that.

Q. Well, do you recall whether there was any increase in the dividends on the common stock during Mr. Hockenbeamer's presidency after 1933?

A. Yes, yes, I am sure the $2 dividend was restored prior to Mr. Hockenbeamer's death.

Q. Do you know whether or not that increase took place at the request and suggestion of the North American Company?

A. No, I don't think that it did; so far as I know [201] it did not.

Q. Did Mr. Hockenbeamer ever tell you that he had discussed the matter of the increase with representatives of the North American Company?

A. No, I have no recollection of any discussion having taken place after the discussions of the questions raised by North American regarding the reduction.

Q. What dividends are now being paid upon the common stock of the Applicant?

(Testimony of P. M. Downing.)

A. $2 per year; 50 cents a quarter.

Q. And you don't recall exactly how long that stock has been paid that dividend rate?

A. No, I don't recall.

Q. Do you know whether or not Mr. Black confers with North American representatives regarding proposed dividends before the same are declared? A. Not that I know of.

Q. If a reduction or increase in the present dividend rate on the common stock were suggested would you request North American's opinion on the advisability of such action before final actions were taken by the Board?

A. No, no, I would not.

Q. Whose judgment would you rely upon?

A. The Board of Directors.

Q. What matters, if any, do you feel North American, [202] as Applicant's largest stockholder, should be consulted on before final action by the Board?

A. I don't think any matters at all.

Q. In your opinion, has North American's ownership of approximately 30 per cent of the common stock of the Applicant affected Applicant's operations and policies? A. Not at all.

Q. Can you think of no situation pertaining to the Applicant which would have been different if North American had owned no stock of the Applicant, and had received cash for the securities of the subsidiaries of Western Power Corporation?

(Testimony of P. M. Downing.)

A. I don't think it would have made a particle of difference.

Q. In your opinion, has North American ever participated in any manner in Applicant's affairs?

A. So far as I know, they have never participated in any of the company's affairs.

Q. In conncetion with the transaction by which the Applicant acquired the securities of Western Power Corporation System did you hear any discussion as to whether or not the regular bankers of the North American System would participate in future financing of the Applicant?

A. No, I never heard anything about that.

Q. Was anything said as to whether or not the houses [203] that had participated in past financings of Western Power Corporation System would have a claim on future financing by the subsidiaries that were taken over by the Applicant?

A. No, that never came up for discussion.

Q. National City Company had handled all of Applicant's financing from about 1917 to 1930, had it not?

A. I don't know whether it handled all or not; they handled considerable financing for the company.

Q. Do you know how National City Company originally got the financing of the Applicant?

A. No, I do not.

Q. You are not familiar with any of the contacts that members of the National City organiza-

(Testimony of P. M. Downing.)

tion might have had as early as 1917 with the Applicant? A. No.

Q. Were you, prior to 1930, acquainted with any members of National City's organization?

A. Some of the local representatives I was acquainted with.

Q. Was Mr. George Weeks a representative of the National City Company at one time?

A. He may have been. I knew Mr. Weeks very well, but I don't recall his connections now.

Q. Who did you know best that was a representative of the National City Company? [204]

A. I have just been trying to think of his name.

Q. Was it Stanley Russell?

A. I knew Stanley Russell. He made one or two trips out here in connection with some financing, and—somebody else here would know his name.

Mr. Phleger: Robert Cross?

The Witness: Cross, yes.

Mr. Phleger: And Conellen?

The Witness: And Conellen, yes.

By Miss Calkin:

Q. Were those representatives of the National City Company residents of the City of San Francisco? A. Yes.

Q. National City Company was not considered a California Banking house, was it?

A. So far as I know they were not; they had representation here.

(Testimony of P. M. Downing.)

Q. But it was generally thought of as a New York Bank? A. Yes sir.

Q. And you do not know how National City Company first got the financing of the Applicant?

A. No, I do not.

Q. To what extent did the Board participate in the selection of the syndicate manager of financing of the [205] Applicant prior to 1930?

A. Generally on the advice and recommendation of the president.

Q. So that the selection of the syndicate manager was left up to the president in the first instance?

A. Yes, he makes the recommendation and finally action is taken by the Board.

Q. Do you know of any instance in which the Board refused to follow the recommendation of the president as to who should manage the syndicate, the underwriting syndicate in connection with Applicant's financing?

A. No, I don't think that I do.

Q. Do you know who proposed the advisability of the issuance of $25,000,000 principal amount of bonds in July of 1930 and the issuance of $25,000,000 principal amount of bonds in January of 1931 to the Board?

A. No, I have no definite recollection on those particular points although matters of that kind, are generally recommended to the Board by the president.

Q. Do you know whether or not North American

(Testimony of P. M. Downing.)

was consulted as to the advisability of these two pieces of financing? A. No, I do not.

Mr. Bosley: When was the first one?

Miss Calkin: July 30th. [206]

By Miss Calkin:

Q. Do you know who headed the syndicates, underwriting syndicates which purchased these two issues? A. No, I do not.

Q. Did you have anything to do with any of the syndicate members obtaining participations in the underwriting syndicates which purchased these two issues? A. No.

Q. Do you know who determined the members of these two underwriting syndicates?

A. No.

Q. Do you know who carried on negotiations between the Applicant and the syndicate manager as to the price spread and other matters connected with these issues?

A. Matters of that kind are always carried on by the president.

Q. And during Mr. Hockenbeamer's presidency you would say, I mean, inasmuch as these issues came out during Mr. Hockenbeamer's presidency, would you say that all negotiations relative to these issues were carried on by Mr. Hockenbeamer?

A. Yes.

Q. With the underwriters? A. Yes.

Q. Are you acquainted with Charles Blyth?

(Testimony of P. M. Downing.)

A. Yes. [207]

Q. Did anyone from his organization ever express to you any dissatisfaction with his firm's second position in the two issues of the Applicant which came out in July of '30 and January of '31?

A. No.

Q. So far as you know, Blyth and Company were satisfied with their participation in the financing of the Applicant during the period that National City Company had the business?

A. So far as I know they were.

Q. Do you recall the $45,000,000 principal amount of bonds issued by your company in March of 1935?

A. Well, I have an indistinct recollection.

Q. Do you know who headed the underwriting syndicate which purchased that issue?

A. No, I don't recall.

Q. Do you recall that at that time National City Company was no longer in the underwriting business? A. No, I don't know.

Q. Do you know whether or not North American was consulted before the Board authorized the issuance of the $45,000,000 principal amount of bonds in March of 1935?

A. No, I don't know that they were.

Q. Do you know who initially suggested this refinancing? [208]

A. That was in '35?

(Testimony of P. M. Downing.)

Q. Yes, in March of '35, the $45,000,000 issue?

A. No, I don't.

Q. Did you ever talk to any representative of North American about any phase of this piece of financing? A. No, no conversation whatever.

Q. Do you know whether or not North American was advised prior to the time the Board authorized the issuance of these securities?

A. I don't know.

Q. Who determined the amount and kind of securities that would be issued in March of 1935?

A. The Board of Directors acting on the recommendation of the president?

Q. Well, was Mr. Hockenbeamer recognized as a person familiar with corporate financing?

A. Yes, very familiar.

Q. He was more what might be described as a financial man than an operating man?

A. Yes sir.

Q. Are you acquainted with the banking firm of Lazard & Freres & Company?

A. I have heard of them; I am not acquainted with them.

Q. You know, do you not, that that firm headed the underwriting syndicate which purchased several issues of bonds [209] by the Applicant?

A. I know that they handled some financing for the Applicant, yes.

Q. What person in that organization carried on

(Testimony of P. M. Downing.)

the negotiations between the Applicant and that banking firm, if you know?

A. The name has escaped me right at the moment. It was mentioned here just a moment ago.

Mr. Bosley: Stanley Russell.

The Witness: Stanley Russell.

By Miss Calkin:

Q. Did Mr. Russell solicit your aid in getting this piece of business for his firm?

A. No, he didn't solicit my aid.

Q. Did any other banking houses contact you in an effort to get the leadership of the syndicate which purchased the $45,000,000 issue in March of 1935? A. No.

Q. Did you talk to anyone other than the conversations had at Board meetings concerning the formation of the underwriting syndicate which purchased the March 1935 issue?

A. No, I had nothing to do with that.

Q. Who, in your opinion, selected Lazard & Freres & Company as manager of the underwriting syndicate that purchased the March 1935 issue?

[210]

A. The Board of Directors on the recommendation of Mr. Hockenbeamer.

Q. And you recall distinctly that Mr. Hockenbeamer did recommend Lazard & Freres?

A. Yes.

Q. As syndicate manager of that issue?

(Testimony of P. M. Downing.)

A. Yes, I am under the impression he did.

Q. Did any member of the Board in March 1935 object either formally or informally to Lazard & Freres & Company's selection when they first learned that that banking house was Mr. Hockenbeamer's choice?

A. I have no recollection of any objection.

Q. Do you recall any dissatisfaction over the manner in which the March 1935 issue was distributed to the public? A. No.

Q. Did Mr. Blyth ever talk to you during the early part of 1935 concerning the desire of his firm to head the underwriting syndicates which might puchase bonds issued by the applicant?

A. No, I have no recollection of any such conversation.

Q. You never promised to help Mr. Blyth, to assist Mr. Blyth in getting the leadership of Applicant's business? A. No.

Q. Are you acquainted with any other members of Mr. [211] Blyth's organization?

A. I may be. Right at the moment I don't recall any though.

Q. Do you know whether or not Mr. Hockenbeamer or any member of your Board sought Mr. Fogarty's or Mr. Black's advice as to what banking firm should head the March 1935 issue?

A. No, I don't know.

Q. Did Mr. Hockenbeamer ever tell you that either of these gentlemen made any suggestions to

(Testimony of P. M. Downing.)

him as to who should head the underwriting syndicate?

A. No, I never heard of any suggestions of that kind.

Q. Are you acquainted with the American Securities Company and Pierce-Fair & Company, or were you acquainted with them at that time?

A. Yes, I knew Pierce-Fair & Company. They have been out of business for a number of years, though.

Q. Did you know American Securities Company?

A. No, I don't know who that concern is.

Q. If testimony later introduced shows that those companies had received participations in financings of the Applicant prior to March 1935 and did not receive such participations in the March 1935 issue, do you have any knowledge as to why they did not receive a participation in the March 1935 issue? [212]

A. Are you speaking of Pierce-Fair & Company?

Q. Pierce-Fair and American Securities?

A. Well, I think Pierce-Fair Company were out of business at that time. They have been out of business for a good many years. I don't know the other concern.

Q. Were you then acquainted with the fact that Blyth & Company was endeavoring to get the leadership of Applicant's financing from Lazard &

(Testimony of P. M. Downing.)

Freres & Co., or to replace Lazard & Freres as leaders of underwriting syndicates formed in connection with Applicant's financing?

A. I heard they were after it. As a matter of fact, there were a large number of investment brokers who were endeavoring to participate in Pacific Gas and Electric Company financing.

Q. But none of them approached you directly?

A. No.

Q. And who acquainted you with the fact that several banking houses were endeavoring to participate in Applicant's financing?

A. Mr. Black;

Q. Did Mr. Black acquaint you with that as early as March or June of 1935?

A. No, not prior to that time; not until after he became president of the company.

Q. Well, did you know anything about the efforts of [213] Blyth & Company to get the leadership of this financing prior to Mr. Hockenbeamer's death?

A. Well, I think that they were anxious to get financing prior to Mr. Hockenbeamer's death. There were a good many different investment bankers who were endeavoring to participate in company financing.

The Examiner: Did you know prior to Mr. Hockenbeamer's death that they were anxious to get participation?

(Testimony of P. M. Downing.)

The Witness: No, I have no definite knowledge that such a request had been made.

By Miss Calkin:

Q. I think a later exhibit will show that the next piece of financing by the Applicant occurred in June of 1935 at which time it issued bonds in the principal amount of $40,000,000 and that in connection with that issue Blyth & Company headed the syndicate on the west coast and participated in the management fee.

Do you know anything about how Blyth & Company's position—or how it came about that Blyth & Company's position was improved over the issue in March of 1935? A. No.

Q. Did anyone at that time tell you that Blyth & Company's representatives in New York City were endeavoring to get Mr. Fogarty and Mr. Black to exert pressure on Mr. Hockenbeamer to permit Blyth & Company to head this issue? [214]

A. No, I haven't heard that.

Q. Did Mr. Hockenbeamer ever tell you in substance that he either gave Blyth & Company more consideration in the June 1935 issue than it had received in the March 1935 issue, or requested Lazard & Freres to improve Blyth & Company's position because North American representatives had suggested that Blyth & Company be given more consideration?

A. No, I never heard of that.

(Testimony of P. M. Downing.)

Q. Were you at this time aware that Mr. Black was probably more sympathetic with Blyth & Company's aspirations than with those of Lazard & Freres? A. No, I was not.

Q. Prior to the time Mr. Black became president did you ever discuss with him who should have the leadership of Applicant's financing?

A. No.

Q. And Mr. Hockenbeamer never acquainted you with any suggestions regarding the same, if any, which he received from North American representatives? A. No, none whatever.

Q. Now, I think the exhibit which will be later introduced will show that the next large piece of financing by the Applicant occurred in March of 1936, at which time the Applicant issued $90,000,000 principal amount of bonds.

Do you know whether or not Mr. Black conferred with [215] North American representatives prior to the submission to the Board of the proposal to issue $90,000,000 of bonds in March of 1936?

A. I don't know that he did.

Q. Did you talk to any representative of the North American Company about any phase of this piece of financing? A. No.

Q. Who handled that financing, that is, who formulated the plan of refinancing, and who recommended the same to the Board?

A. Mr. Black handled it. All matters having to do with finance are handled by the president.

(Testimony of P. M. Downing.)

Q. Do you know who headed the syndicate which purchased the $90,000,000 issue?

A. No, I couldn't tell you from memory.

Miss Calkin: I think it will be admitted that this syndicate was headed by Blyth & Company, will it not?

Mr. Gerdes: Yes.

By Miss Calkin:

Q. Did you ever suggest to Mr. Black that Blyth and Company be given the leadership of this issue, and that the leadership not be given to Lazard & Freres & Company?

A. No, I never made any such suggestion.

Q. Do you know who was responsible for Blyth & Company getting the leadership of the $90,000,000 issue [216] of March 1936? A. No.

Q. Do you recall any discussions had at meetings of the Board or of the Executive Committee concerning who should head this piece of business?

A. There was some discussion when the recommendation was made by the president that it go to Blyth & Company, and the recommendation was approved.

Q. So Mr. Black recommended to the Board that Blyth & Company head the syndicate which purchased the $90,000,000 issue of March 1936?

A. My recollection is that such a recommendation was made, yes.

Q. And were any members of the Board opposed to Blyth & Company's leadership?

(Testimony of P. M. Downing.)

A. I don't recall any opposition.

Q. Did Mr. Black give any reasons why he had selected Blyth & Company rather than Lazard & Freres & Co., as the manager of this syndicate?

A. No, I don't recall any reason that may have been given.

Q. I think that later documentary evidence will show that Lazard & Freres & Co., had a fifth position in the syndicate which purchased the $90,000,000 issue. Do you have any knowledge as to why Lazard & Freres & Company's [217] position was reduced from first to fifth?

A. No, I have not.

Q. Did any member of the Board other than Mr. Black evidence a desire that Blyth & Company head this business rather than Lazard & Freres & Company that you now recall?

A. No, I don't recall of any other member of the Board having any very definite ideas one way or the other.

Q. Were you, as a director, advised at the time Blyth & Company was selected to head this syndicate that their leadership would be more acceptable to the North American people than was the leadership of Lazard & Freres & Company?

A. No, no, I never heard of that.

Miss Calkin: Later documentary evidence, I believe, will show, I think counsel will admit, that Dillon Read & Company received a substantial par-

(Testimony of P. M. Downing.)

ticipation in the $90,000,000 issue; is that not correct?

Mr. Gerdes: Yes.

The Examiner: Just a minute, Miss Calkin. Does this refer to the same $90,000,000 issue in March?

Miss Calkin: That is right.

The Examiner: If this is a new line of questioning with respect to Dillon Read may we have a short recess?

Miss Calkin: Yes.

(Whereupon a short recess was taken.) [218]

The Examiner: We will resume the hearing now.

Do you know where you stopped your examination, Miss Calkin? You were inquiring about the extent and position of Dillon Read, who was underwriting in March 1936.

By Miss Calkin:

Q. In March of 1936 did you know whether or not Dillon Read & Co. had previously participated in and, in many instances, headed the financing of subsidiaries of the North American Company?

A. No, I did not know that.

Q. You did not know, if such were a fact, that Dillon Read & Co. were considered as bankers for the North American system?

A. No, I did not know that.

Q. Do you know how Dillon Read & Co. got a substantial participation in the March 1936 issue of the Applicant? A. No, I do not.

(Testimony of P. M. Downing.)

Q. You have no knowledge whatsoever concerning the method by which, or at whose suggestion, Dillon Read & Co. became a member of the syndicate which purchased the $90,000,000 in bonds from the Applicant in March of 1936?

A. No. I have no knowledge of that.

Mr. Bosley: I think the witness will state he doesn't know the first thing about any of the underwriters included in that syndicate, other than Blyth & Co. who headed it. [219]

I think, if you will ask a comprehensive question, you will save a lot of time. I don't believe Mr. Downing knows who the members of the syndicate were other than Blyth & Co.

By Miss Calkin:

Q. Is that correct, Mr. Downing?

A. That is correct.

Q. Do you know who selected the members of the syndicate? A. No, I do not.

Q. Other than the management?

A. No, I do not.

Q. Do you know who carried on the negotiations between the Applicant and Blyth & Co. in reference to this issue? A. Mr. Black.

Q. During the time you have been associated with the Applicant has it always been customary for the President to handle the financing?

A. Yes.

Q. So far as you know did Mr. Drum handle it during his presidency?

(Testimony of P. M. Downing.)

A. Yes. He had the final decision, although Mr. Hockenbeamer worked with him.

Q. In his capacity as Controller? A. Yes.

Q. And during Mr. Creed's lifetime? [220]

A. Mr. Creed handled it.

Q. Is there anyone in Applicant's organization today whose position corresponds with that of Mr. Hockenbeamer's prior to the time he became president?

A. No; no one with the title of Vice-President and Controller. We have a Controller now but he doesn't have the title of Vice-President.

Q. Well, during Mr. Hockenbeamer's presidency did he work closely with anyone in the organization on financing of the Applicant as did Mr. Drum work with Mr. Hockenbeamer during Mr. Drum's presidency?

A. No, I would say not. Mr. Hockenbeamer, during his presidency, handled financial matters himself.

Q. And what has been the situation since Mr. Black has been president?

A. The situation has been very similar to that during Mr. Hockenbeamer's presidency.

Q. Do you know where the negotiations between the Applicant and Blyth & Co. were carried on? A. No, I do not.

Q. Do you consider Blyth & Co. a San Francisco or California banking house, as distinguished from a New York banking house?

(Testimony of P. M. Downing.)

A. Mr. Blyth's residence is here. We look upon him as a Californian. [221]

Miss Calkin: I believe the testimony wili later show that Dillon Read & Co. did not participate in the next issues of the Applicant, which were a $30,000,000 bond issue in May of 1936, and a $35,000,000 bond issue in October of 1936.

Does counsel admit that that is true?

Mr. Phleger: That is true.

By Miss Calkin:

Q. Do you know, Mr. Downing, why that firm did not participate in the May and October 1936 issues of the Applicant? A. No, I do not.

Miss Calkin: I believe the last piece of Applicant's financing was a $50,000,000 bond issue which was privately placed in February of 1936. Is that correct?

Mr. Bosley: $15,000,000.

Miss Calkin: Is that correct?

Mr. Phleger: That is correct.

By Miss Calkin:

Q. Mr. Downing, do you know the reason that the $15,000,000 bonds issued in February of 1936 were sold privately, rather than publicly?

A. No, I do not.

Q. Did the North American Company, to your knowledge, play any part in the determination as to how this money should be raised?

A. No, I don't know that it did. [222]

(Testimony of P. M. Downing.)

Q. Do you know to what extent Mr. Black has conferred with representatives of the North American Company in connection with financing of the Applicant since he has been president?

A. No; I don't know that he has conferred at all. I don't know.

Q. Mr. Black has never expressed to you North American's views on any financial policies of the Applicant? A. No, he has not.

Q. Did Mr. Hockenbeamer ever do so?

A. No, I don't know that he ever did.

Q. Do you know whether or not during Mr. Hockenbeamer's presidency, and subsequent to 1930, he conferred frequently or infrequently with Mr. Black concerning the advisability of refunding and refinancing by the Applicant?

A. I don't know to what extent, if at all, he conferred with Mr. Black or anyone else connected with the North American Company.

Q. As a matter of fact, isn't it true, Mr. Downing, that in your work as Vice-President and General Manager of the company you had very little to do with the financial end of the company?

A. That is correct; yes.

Q. Your time is almost entirely occupied by the operations of the company? [223]

A. That is correct; yes. The President has always handled financial matters for the company.

Q. Then you would say that the President has

(Testimony of P. M. Downing.)

always, in the first instance, determined the financial policies of the Applicant?

A. Yes; subject, of course, to the approval of the Board of Directors.

Q. Does the President usually submit matters to the Board with his recommendations, not only financial matters but other matters? A. Yes.

Q. What is the usual procedure at the Board meetings? Who calls the meeting to order and who presents the matters, and that sort of thing?

A. The President presides at all meetings of the Board and at all meetings of the Executive Committee. The order of business is something like this: First will be the reading of the minutes. Then the Vice-President and General Manager is called upon for his report, and such recommendations as he may have to make. After he has made his report other operating heads, who sit in with the Executive Committee or with the Board, are called upon for reports. Then the President makes his report, which is generally financial in character, and also has to do with major policies of the company. [224]

Q. The Applicant does not have an officer known as Chairman of the Board?

A. No, we have not.

Q. You mentioned other operating men being called in at Board meetings. Is that frequently done, or are there certain officers or employees of the company who regularly attend Board meetings,

(Testimony of P. M. Downing.)

such as those mentioned in attendance at the meetings of the Executive Committee?

A. They regularly attend because all of the operating employees who sit with the Executive Committee are members of the Board of Directors.

Q. Can you relate, recall, any instance in which the Board refused to follow the recommendations of Mr. Black on financial matters?

A. No, I cannot. The recommendations generally have been approved.

Q. Do you recall any instance in which the Board has refused to follow the President's recommendations on any matters submitted to it by the President?

A. I think that one instance, that is, when the dividend was cut. I am satisfied that Mr. Hockenbeamer recommended that the regular dividend be declared and that recommendation was not approved.

Q. I think my question was directed to recommendations [225] made by Mr. Black. Do you recall any instance in which the Board has refused to follow recommendations made by Mr. Black since he has been President?

A. No, I don't recall of any.

Q. In other words, there has always been complete harmony between the Board and Mr. Black?

A. Yes.

Q. Are matters frequently submitted to the

(Testimony of P. M. Downing.)

Board for discussion without recommendation on the part of Mr. Black?

A. Oh, yes. Matters come up for discussion where it is not necessary that any action be taken. They are just up for discussion in order that the Board may be familiar with what is going on.

Miss Calkin: I think that is all.

The Examiner: Any redirect examination, Mr. Pheleger?

Mr. Phleger: Yes. I have a few questions.

Redirect Examination

By Mr. Phleger:

Q. Mr. Downing, you were asked whether Mr. Black did not employ or discharge all officers and employees, and I understood your answer was "yes". It is a fact, is it not, that all of the principal officers of the company are elected by the Board of Directors and subject only to removal by it; is that not so?

A. That is probably so. But the President's recom- [226] mendation regarding any employee would generally be acted upon by the Board. That was what I had in mind when I said that he did have complete control over all employees.

Q. Well, the Vice-Presidents, for instance, and other important officers, are elected by the Board, are they not? A. Yes.

Q. And they are removed by the Board?

(Testimony of P. M. Downing.)

A. Yes.

Q. And the President, in order to remove any of those officers, would have to recommend to the Board their removal?

A. Yes, that is probably correct.

Q. Now, with respect to the manner in which the company operates it is a fact, is it not, that Mr. Black usually confers with the various committees of the company in the process of formulating company policies; is that not so?

A. Yes.

Q. That is to say, any matter of budget recommendation is taken up by the President with, let us say, the appropriations committee before any recommendation is made to the Board, is that not so? A. Yes.

Q. And isn't it a fact that all major decisions of the company on questions of policy go through rather a lengthy routine before they eventuate in a recommendation by the [227] President to the Board? A. That is correct.

Q. So that when the President makes a recommendation to the Board that recommendation usually represents the composite views of the major executives of the company reached after rather lengthy discussions? A. That is correct; yes.

Q. And is it not a fact that Mr. Black, on all major questions affecting the company, discusses those questions at length with the Executive Com-

(Testimony of P. M. Downing.)

mittee before he makes any final recommendation on them? A. Yes.

Q. Let us take the Hetch Hetchy matters, for instance. Are they not the subject of almost continuous discussion, both with the committee of officers and the Executive Committee of the company?

A. Yes. That has been a topic of discussion for a long time.

Q. Is it not a fact that the company's policy with respect to that matter, and all other important matters, are formulated through a process of discussions beween the major executives and the Executive Committee? A. That is correct; yes.

Q. The President just doesn't walk in and tell the Executive Committee, or the Board of Directors, that he recom- [228] mends something and the Board and the Executive Committee simply approve them—that isn't the practice, is it?

A. Oh, no.

Q. Let us, for instance, take the matter of your budget. You have testified that the budget originates down below the division managers and the department heads and comes up to your appropriations committee.

A. It comes to the management first. But the budget is not approved at the beginning of the year when it is made out. The budget is intended to give the management an idea of the probable expenditures to be made during a given period. Now,

(Testimony of P. M. Downing.)

that budget is not approved in its entirety, but when the individual items of work listed on that budget come up for approval they are then approved by, first, the division managers or the engineers, and then the appropriations committee, the general manager, and finally they go to the Executive Committee for approval.

Q. Those are what are known as "G. M.'s"?

A. Yes. G. M. authorizations.

Q. General Manager's authorizations?

A. Correct.

Q. After the Executive Committee has approved a G. M. authorization, and the work has been completed, does the matter then again come before the Executive Committee?

A. Yes. It comes before the Executive Committee in the form of a report from the Auditor showing the amount of [229] money approved by the the G. M. authorization and the actual expenditures chargeable against that particular G. M., and the Executive Committee takes action cancelling the overruns on those various G. M.'s and approving over-expenditures on them.

Q. So that they not only approve the items initially, but they check them finally and must either approve the overs and cancel the unders?

A. Correct. They do that each month when the Auditor presents his statement to the Executive Committee.

(Testimony of P. M. Downing.)

Q. Who fixes the salaries of the employees over $300 a month? A. The Executive Committee.

Q. All those matters are taken up and passed by the Executive Committee, are they? A. Yes.

Q. Now, you were asked in various forms, Mr. Downing, as to whether or not various actions taken by the Executive Committee and the Board of Directors were taken upon or after consultation with the North American Company. Your answers generally, where you did not categorically say they they were not, were that you did not remember. Would you have remembered had it been stated in the Board of Directors that those particular actions were being presented with the recommendation or with the lack of recommendation of the North American Company? [230]

A. If it had come before the Board in that form, yes; I am certain that I would remember it.

Q. So that if such matters had been presented and associated with the name of the North American Company, you would have recalled it?

A. Yes, I am sure I would.

Q. You have no recollection of any such matter having been presented? A. No.

Q. Now, in connection with the election of Mr. Black as President of the company you, of course, participated in that as a director did you not?

A. Yes.

Q. A question was asked on cross examination

(Testimony of P. M. Downing.)

whether or not, in connection with the presentation of Mr. Black's name, it was suggested that after his election he would be subject to the suggestion of the North American Company. Was any such statement made to you in connection with the consideration of Mr. Black's election?

The Witness: May I have that question read?

The Examiner: Read the question.

(The question referred to was read by the reporter as above recorded.)

A. No. [231]

By Mr. Phleger:

Q. If it had been suggested at the time that Mr. Black's name was presented to the Board in connection with the presidency that after his election he would be subject to the suggestion of the North American Company, would you have voted for his election? A. No, I would not.

Q. In your opinion would the other directors have voted for him?

A. I don't think they would have.

Q. You were asked, Mr. Downing, with respect to the names of persons active in the affairs in the company during the administration of various presidents. You are acquainted of course, with Mr. Frank B. Andersen? A. Very well.

Q. And was he a director and a member of the Executive Committee for many years?

(Testimony of P. M. Downing.)

A. Many years; yes.

Q. What was Mr. Andersen's business or profession?

A. He was President of the Bank of California and later Chairman of the Board of the Bank of California.

Q. He was a director and a member of the Executive Committee, was he not, during Mr. Drum's administration, during Mr. Creed's administration and during Mr. Hockenbeamer's administration up until the time of his death, was he not? [232]

A. Yes. As far back as I can remember he was on the Board.

Q. Was he always very active? A. Yes.

Q. Did he take a considerable interest in the financial affairs of the company? A. Yes.

Q. Do you remember Mr. Fred T. Elsey?

A. Very well; yes.

Q. Was he a director and a member of the Executive Committee for many years? A. Yes.

Q. Was he active in the affairs of the company?

A. Very active; yes.

Q. Was he engaged in financial work?

A. Yes. He was President of the American Trust Company at the time of his death and had been President for a number of years.

Q. Was he active in the financial affairs of the company? A. Yes.

Q. As well as in its other affairs? A. Yes.

(Testimony of P. M. Downing.)

Q. During all of the time that you have been a director and, indeed, before that, when you have attended [233] Directors' meetings has there always been a full and free discussion of all matters brought before the Board for discussion?

A. Yes; always a free and full discussion of the matters that have come up.

Q. Is that true also of all matters brought before the Executive Committee? A. Yes.

Q. During all of that period has any individual, whether he be president or not, exercised a dominating influence over either the deliberations of the Board or of the Executive Committee?

A. No.

Q. By the way, some comment or suggestion was made in a question this morning regarding the election of Silas Palmer as a director of the company. How long have you known Silas Palmer?

A. Oh, 20 or 25 years.

Q. You knew him for many, many years before he ever became a director of the company, did you not? A. Yes, many years.

Q. Have you served on the Proxy Committee of the Board ever since you have been Vice-President and General Manager of the Company?

A. Yes.

Q. Do you know who the other Proxy members have been [234] during that entire period, that is, the officers who also served on that committee?

(Testimony of P. M. Downing.)

A. I think the President and the Secretary.

Q. The President, the Vice-President and General Manager, and the Secretary?

A. Yes; I think that is the Proxy Committee.

Q. Now, with respect to the period that Mr. Earl was a member of the Board of Directors and of the Executive Committee of the company, did he ever take any more active part in the deliberations of those two bodies than any other directors?

A. No.

Q. Did he ever at any time state that any view he expressed was the view of the North American Company?

A. I have no recollection of any statement of that kind ever having been made by him.

Q. If it had been made you would be apt to recollect it, would you not?

A. I think I would; yes.

Q. A question was asked by counsel that it would be possible—I think it was placed this way: Would it be possible for North American to exercise control of the policies of the Pacific Gas and Electric Company if it exercised control over Mr. Black? I don't recall what your answer was. But, in your opinion, if it were known or believed by the [235] Board that the North American was exercising a control over Mr. Black, do you think that Mr. Black would be able to control the action of the Board of Directors?

(Testimony of P. M. Downing.)

A. No, I don't think that he would.

Q. Have you ever, during the time that you have been with the company and have served as a member of the Board of Directors and sat with the Executive Committee, observed anything of any kind, character and description that conveyed to your mind the thought that the North American either exercised any control or any controlling influence over the Pacific Gas and Electric Company, or over any of its affairs? A. Nothing whatever.

Mr. Phleger: That is all.

The Examiner: Any questions on recross?

Miss Calkin: I have one further question that I neglected to ask.

Recross Examination

By Miss Calkin:

Q. Mr. Downing, to what extent did the Applicant take over the personnel of subsidiaries of Western Power Corporation in 1930 as the Applicant acquired those subsidiaries?

Mr. Gerdes: May I have that question read?

(The question referred to was read by the reporter as above recorded.)

A. We took over as many of those employees as we could [236] find places for. It is true that some of them had to take positions of less responsibility and less compensation than they had enjoyed with the absorbed subsidiaries, and there

(Testimony of P. M. Downing.)

were some people further down in the ranks whom we couldn't take care of.

By Miss Calkin:

Q. Referring to Applicant's Exhibit No. 9, Mr. Downing, will you point out—as I understand this chart, most of these blocks or circles refer to some particular individual. Could you tell me, without too much trouble, how many persons occupying these various positions were formerly associated with the subsidiaries of Western Power Corporation?

A. That would be very difficult for me to do from memory.

Q. Mr. Wishon is Assistant General Manager, is he not? A. Yes.

Q. He was one formerly connected with——

A. (interposing) He was formerly with the Great Western and the San Joaquin.

Q. Can you now recall any of your key men, so-called, who were formerly associated with the subsidiaries of Western Power Corporation?

A. Yes. Our publicity manager was formerly the head of the publicity department of the Great Western and San [237] Joaquin. He took a position superior to that of the publicity man who had been serving with the Pacific Gas and Electric Company.

The auditor of the Great Western came in and is now in our auditing department. He is not the

(Testimony of P. M. Downing.)

auditor, but he took a position under our general auditor.

In the purchasing department there are two, one or two men, who were in the purchasing department of the Great Western Company.

The present chief engineer of the company was formerly with the Great Western Power Company, and a number of men in the engineering department are men who were formerly with the Great Western.

Q. Does Applicant now have on its payroll any persons who were formerly employed by the North American Company, or any of its subsidiaries, other than Mr. Black, and the former employees of the Western Power Corporation's system companies? A. No, no.

Q. You know of no instance where an individual employed by the North American Company, or a subsidiary of North American, with the exceptions previously noted, has been transferred to or employed by the Applicant?

A. No, I don't know of a single instance.

Q. In other words, you don't know of anyone, say, that was formerly connected with the Union Electric Company [238] of Missouri that is now in the employ of the Applicant?

A. No, I do not know of a single instance.

Q. Are you acquainted with all the subsidiaries of the North American Company? A. No.

(Testimony of P. M. Downing.)

Q. Do you have anyone on your payroll that you know of that was formerly employed by the Potomac Electric Power Company? A. No.

Q. Do you have anyone, to your knowledge, employed by the Applicant who was formerly employed by the Cleveland Electric Illuminating Company?

A. No.

Q. What about the Wisconsin Electric Company?

A. No, I don't know of anyone from there.

Q. What about the Wisconsin-Michigan Power Company?

A. No, none from there; nor from the Detroit Edison.

Miss Calkin: I think that is all.

Redirect Examination

By Mr. Phleger:

Q. Mr. Downing, you have testified that the company has approximately 12,000 employees. Would you say that almost all of them are what would be termed Californians and were Californians at the time they entered the employ of the company?

A. Well, I think it is probably safe to say the [239] majority of them are. It is a fact that if they weren't Californians when they were first employed by the company that they have become Californians by this time because something over two-thirds of all the employees of the company have

(Testimony of P. M. Downing.)

been in the organization, or subsidiary organizations, for five years or more.

Q. With respect to your Chief Engineer, for instance, Mr. Euler, whom you stated came from the Great Western, when he entered the employ of the Pacific Gas and Electric Company he did not enter in that position, did he?

A. No. He was general superintendent of the San Francisco & East Bay divisions and was made Chief Engineer on the death of the Vice-President in charge of engineering. That latter position was never filled, but the position of Chief Engineer was created and Mr. Euler was appointed to that position.

Q. He simply worked himself up to that important position after several years of service with the Pacific Gas and Electric Company? A. Yes.

Mr. Phleger: That is all.

The Examiner: Any further questions?

Miss Calkin: No further questions of Mr. Downing.

The Examiner: Unless someone desires to recall you, you may be excused at this time.

(Witness excused.) [240]

The Examiner: It is after 4:00 o'clock now. Do you desire to call another witness this afternoon or do you think you could make sufficient progress to make it worth while?

(Testimony of P. M. Downing.)

Mr. Phleger: It is a matter of your convenience. Are we going to meet here tomorrow?

The Examiner: In the morning, yes, until I can make some arrangements about quarters down there. I haven't been able to arrange it yet.

Suppose we go on for another fifteen or twenty minutes.

Mr. Phleger: All right. Suppose we go ahead for fifteen minutes.

Mr. Foote, will you take the stand, please?

Whereupon

DAVID HIRAM FOOTE

was produced as a witness for and on behalf of the Applicant and, after having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Will you give your name for the record?

A. My full name?

Q. Yes. A. David Hiram Foote.

Q. Where do you live? A. San Francisco.

Q. How long have you lived in San Francisco?

[241]

A. In the vicinity of San Francisco, at Atherton, San Mateo, and in the immediate vicinity of San Francisco for the last 40 years.

(Testimony of David Hiram Foote.)

Q. When did you first enter the employment of the Pacific Gas and Electric Company, or its predecessor companies?

A. February 1, 1903.

Q. When did you first come to California.

A. About 1900.

Q. Where had you resided previous to that?

A. About a year, or perhaps a year and a half, in Arizona and prior to that time in Philadelphia.

Q. What position had you occupied in Philadelphia?

A. I was Secretary and Treasurer of the Union Trust Company of Philadelphia.

Q. What position do you now hold with the Pacific Gas and Electric Company?

A. Vice-President, Secretary and Treasurer.

Q. When did you first enter the service of the Pacific Gas and Electric Company and its predecessor companies?

A. When the Pacific Gas and Electric Company was formed, started business January 1, 1906. It was formed in October 1905, incorporated.

Q. And at that time you had an official position with one of its constituent companies, did you not?

A. Yes. I was Assistant Secretary of the California [242] Gas & Electric Corporation.

Q. When did you enter the employ of that company?

A. The California Gas and Electric Corporation?

Q. Yes. A. February 1, 1903.

(Testimony of David Hiram Foote.)

Q. What positions have you held with the Pacific Gas and Electric Company?

A. Well, I was elected Assistant Secretary in March of 1906. Then Mr. Conlisk was Secretary at that time and he resigned in July 1907 and I was made Secretary in July 1907.

Afterwards, about 1910, I acquired the additional title of Assistant Treasurer. Then later on, I have forgotten the dates, I was made Vice-President. Then after that, when Mr. Hockenbeamer became President, I was made Treasurer. So I have the three titles now and have had them since Mr. Hockenbeamer's election to the presidency.

Q. When did you first become a director of the Pacific Gas and Electric Company?

A. Oh, about 1909, I think.

Q. You have been a director of the Pacific Gas and Electric Company for many years, have you not?

A. Yes. I was a director at that time for several years, and then I resigned from the Board to give a place for a prominent businessman in San Francisco. I think it was Wallace Alexander, or A. B. C. Dohrmann—I have forgotten [243] which—but anyway afterwards, after they passed on, I was re-elected as a director. That was about 26 years ago, I think it was, either in 1914, 1913, or somewheres in there.

Q. And you have been a director ever since?

A. Continuously since that time; yes.

(Testimony of David Hiram Foote.)

Q. Do you own any securities of the North American Company? A. No.

Q. Did you ever own any? A. None.

Q. Have you ever owned any securities in any subsidiary of the North American Company?

A. No.

Q. Do you devote any of your time and attention to any other affairs other than those of the company? A. No, I do not.

Q. Do you recall who the principal moving spirits were in the original incorporation of the Pacific Gas and Electric Company?

A. I think I do.

Q. Will you name them?

A. John Martin, Eugene J. de Sabla—I think he is still alive—R. N. Hotaling, Frank G. Drum and Edward Coleman. They were the principal figures.

Mr. Bosley: There were two Colemans? [244]

The Witness: Yes; Edward and John, I think. They were with one of the subsidiary companies.

By Mr. Phleger:

Q. Now, the Pacific Gas and Electric Company at its inception acquired the controlling interest in two principal corporations, did it not?

A. It did.

Q. And what were those two principal corporations?

A. California Gas & Electric Corporation and the San Francisco Gas & Electric Company.

(Testimony of David Hiram Foote.)

Q. What properties did the San Francisco Gas & Electric Company own and where was its business located?

A. I think entirely within the City and County of San Francisco.

Q. Did it consist of both electricity and gas business? A. Yes.

Q. Was Mr. C. O. G. Miller actively connected with the San Francisco Company?

A. He was a director.

Q. And a large owner, was he?

A. Yes, I think so.

Q. Had he been connected for many years with the San Francisco properties of that company?

A. I believe so; yes, sir. [245]

Q. The Pacific Gas and Electric Company issued its securities in payment or part payment for the securities and stock of these constituent companies, did it not?

A. For the stock of the San Francisco Gas & Electric Company, and also for the stock of the California Gas & Electric Corporation.

Q. It also issued, did it not, at that time—I am referring to the Pacific Gas and Electric Company—preferred and common stock? A. Yes.

Q. What became of the common stock that was then issued?

A. The common stock of the Pacific Gas & Electric Company was issued in consideration of options on the stock of the San Francisco Gas & Electric

(Testimony of David Hiram Foote.)

Company and California Gas & Electric Corporation, I think, and was issued to a Nevada corporation, the Pacific Gas and Electric Investment Company, I think it was.

Q. And what became of that stock?

A. After the fire of 1906 the company, of course, had considerable losses—I mean the Pacific Gas and Electric Company—and an assessment was called on all the stock of the Pacific Gas and Electric Company. The preferred stock of the Pacific Gas and Electric Company paid its assessment, the common stock did not and it all came back into the treasury [246] of the Pacific Gas and Electric Company.

Q. Do you remember what the amount of that assessment was? A. $10 a share, I think.

The Examiner: Both preferred and common?

The Witness: Yes.

By Mr. Phleger:

Q. So that as a result of that assessment all of the common stock which had originally been issued by the company was sold and bought in by the Pacific Gas and Electric Company?

A. I don't recollect the exact procedure, but I know it all came back into the treasury of the Pacific Gas and Electric Company.

Q. Because of non-payment of the assessment?

A. Yes; because of non-payment of the assessment.

(Testimony of David Hiram Foote.)

Q. Will you outline generally your present duties with the company?

A. Well, I have charge of all the stock and bond transfers, and the issuance of bonds and stock generally, the details in connection with it; the payment of dividends; and I have charge of the company's cash, and the handling of it, and the cashiers' departments are under my supervision, and the Accounting Bureau of the Treasury Department as well. That about—also the secretarial duties. I take care of the [247] minutes of the meetings of both the Board of Directors and the Executive Committee. Our by-laws provide I shall do that as Secretary.

I also have charge of all the records of the company. They have been under my supervision and charge ever since I have become Secretary.

Q. Do you have custody of all the securities of the company?

A. Yes, yes, yes; as Treasurer.

Q. Where are all these books and records kept?

A. At 245 Market Street.

Q. That is the head office of the company?

A. Yes, sir.

Q. Since you have been Secretary of the company have the books and records of the company ever been kept at any place other than San Francisco?

A. No; or no copies of them have either.

Q. Or no copies?

(Testimony of David Hiram Foote.)

A. No copies of any minutes have ever been out of my office until very recently.

Q. They have always been at the head office of the company and the head office of the company has always been in San Francisco?

A. That is right; exactly.

Q. Has the company ever maintained any office outside [248] the State of California?

A. They have not; no.

Q. Who are the transfer agents for the company's stock?

A. The transfer agency of the stock in San Francisco is at the office of the company. C. E. Holt is the transfer agent and he makes, his department—he has quite a large department—he makes all the transfers of the stock.

The American Trust Company is the registrar of the stock issues in San Francisco.

The Bankers Trust Company in New York City is the transfer agent in New York City.

The New York Trust Company is the New York registrar. That is all.

Q. Coming back to the American Trust Company in San Francisco, which is the registrar, when was it, or its predecessor company, first appointed registrar?

A. At the very inception of the company. It has been the only registrar. The Mercantile Trust Company was the original company.

(Testimony of David Hiram Foote.)

Q. That was the predecessor of the American Trust Company? A. Yes.

Q. Now, with respect to the Bankers Trust Company, the New York transfer agent of the company, when was it first [249] appointed transfer agent?

A. A long time ago. It is pretty hard to remember the exact year. I think there was another company, possibly the Equitable Trust Company, that was originally our transfer agent there. I had some differences with them. They issued stock in names that our counsel didn't approve of. They wouldn't do otherwise and, through my recommendation, we went over to the Bankers Trust Company, because they had been trustees under one of our mortgages and they were very accommodating and very nice people to deal with. That must have been about 1910, I guess, or somewhere along in there, or 1912 or 1914. I have forgotten the date.

Q. So that they have been transfer agents ever since that time? A. Yes, sir.

Q. Have you known any officers of the Bankers Trust Company personally?

A. Yes. I knew Harry Wilson very well. He is now retired. He was in their Trust Department and I had very close contact with the work that he did for us. I met him in New York and he and his wife were out here in San Francisco and I entertained them. They were very nice folks.

(Testimony of David Hiram Foote.)

Q. You have always had cordial relations with the Bankers Trust Company since 1910?

A. Absolutely; yes. [250]

Q. Now, with respect to the New York Trust Company, which is your New York registrar, when was it appointed registrar?

A. I think they were apponted registrar before the Bankers Trust Company was made transfer agent. They were the original registrar in New York to my recollection.

Q. They were appointed on or about 1910?

A. When we first started to transfer stock in New York—way back. We didn't transfer our stock in New York at the very start of the company. It was done afterwards.

Q. Do you know how it happened to be appointed?

A. No, I do not. I don't recollect.

Q. But it has acted as transfer agent for approximately 30 years? A. Yes.

Q. On what exchanges is the stock of the Pacific Gas and Electric Company listed for trading?

A. The common stock is listed on the New York Stock Exchange. All classes of stock, both common and preferred, are listed on the San Francisco Stock Exchange and also on the Los Angeles Stock Exchange.

Then there has been a sort of a partial listing on the Honolulu Exchange. That was done at the re-

(Testimony of David Hiram Foote.)

quest of one of our former directors, Mr. John McCandless. Has now passed on. [251]

The Examiner: As to both common and preferred?

The Witness: I think, my recollection is the common is not listed in Honolulu. I think it is just the preferred. I don't know whether you call it a full listing or not. We consented that they should deal in the stock, something of that sort. I think they listed it among their securities. It is a very small exchange, and very unimportant.

Mr. Phleger: It is now 4:30, Mr. Examiner, and I suggest an adjournment.

The Examiner: Before we recess, I notice one or two members of the public in attendance.

I will ask whether or not either of you (indicating) gentlemen desire to make any statement for the record in this matter.

The gentleman here at the counsel table, do you desire to make any statement for the record in this proceeding?

Mr. Petroy: Beg your pardon?

The Examiner: Do you desire to make any statement for the record in this proceeding?

Mr. Petroy: I would like to ask some questions, if you will permit me.

The Examiner: I don't know as questions would be appropriate at this time. What is your interest in this proceeding?

(Testimony of David Hiram Foote.)

Mr. Petroy: I am a gas and electric consumer here in [252] San Francisco. I am a citizen. I have been writing on the public utility question for fifty years, and public ownership. My apartment and my home, for thirty years, has been burglarized almost daily, and 30,000 sheets of manuscript material that was gathered for me by the electrical workers union, and other unions of the Pacific Gas and Electric Company that were on strike in 1913, has been stolen from my apartment.

The Examiner: Would you mind stating your name and address, please?

Mr. Petroy: Edward Petroy—P-e-t-r-o-y. My residence is 1263 Oak Street, San Francisco. I was born here. I am 73 years of age. I have been a citizen and a taxpayer of San Francisco for more than fifty years.

The Examiner: I shall be happy, at the appropriate time, for you to make a statement for the record.

You will be in attendance, I suppose, again at some other session?

Mr. Petroy: Yes. I would like, for example, to ask a few questions of Mr. Downing and of the present witness.

I would like, for instance, to ask the present witness why the salary of the President of the Pacific Gas and Electric Company was increased from $50,000 a year to $75,000 a year when Mr. Black became President of the company.

(Testimony of David Hiram Foote.)

The Examiner: It is quite possible, Mr. Petroy —I cannot anticipate what trend this examination may take—that [253] those matters may be developed by the questioning of counsel. So if you intend to be present at these proceedings it is quite possible your questions will be answered.

At the appropriate time we will be glad to have your statement.

Mr. Petroy: The question of salaries was touched on here and I thought it might be an appropriate time to ask about it.

I am almost deaf and I have to sit up quite close. I have an instrument to aid my hearing, but the button that was here (indicating) in 1930 was disconnected so I couldn't hear when I went down to Albuquerque on the gas and electric rate case. Then later a earpiece that goes in it here (indicating) was stolen from the apparatus. So that is why I am in this condition now.

The Examiner: That is unfortunate.

If you want to attend the rest of these hearings you will be quite welcome.

Mr. Petroy: Thank you.

The Examiner: We will now adjourn until tomorrow morning at 10:00 o'clock.

(Whereupon, at 4:30 p. m., an adjournment was taken to Thursday, November 14, 1940, at 10:00 a. m.) [254]

PROCEEDINGS

The Examiner: We will resume the hearing whenever you are ready, Mr. Phleger.

Whereupon——

DAVID HIRAM FOOTE

was produced as a witness for and on behalf of the Applicant, and having been previously duly sworn, testified further as follows:

Direct Examination

(Resumed)

By Mr. Phleger:

Q. Mr. Foote, in what principal banks does the company maintain its deposits; first, the banks in San Francisco?

A. The Bank of California National Association, American Trust Company, Wells Fargo Bank & Union Trust Company, Crocker First National Bank, Bank of America, Anglo California National Bank & Trust Company.

Q. Which of those banks would you describe as the principal banking connection of the company?

A. The American Trust Company, I would think.

Q. When did the company first enter into banking arrangements with the banks that you have just mentioned?

A. The Crocker National Bank—it was then the Crocker-Woolworth — We had banking connections with them in 1903. Also with the then Mercantile Trust Company, which afterwards became the

(Testimony of David Hiram Foote.)

American Trust Company; and also with [256] the Bank of California, I think at that time.

Now—let me see—when we took over the San Francisco Gas & Electric Company they were dealing with the Donohoe-Kelly Bank. They have gone out of existence a number of years ago. I think they were taken over by the Bank of America, Bank of Italy at that time, which afterwards changed to the Bank of America. That was our first dealing with them—that is, the Pacific Gas and Electric Company dealings, although the San Francisco Gas & Electric Company had dealt with that bank for many years prior. In fact, the President of that bank, I think, was at one time a director of the San Francisco Gas & Electric Company. That was before we took them over.

Then—let me see—we did some business with the Wells Fargo Bank & Union Trust Company oh, many many years ago—I can't remember just when. It was after those other banks though. By the way, it was then the Union Trust Company of San Francisco that we started business with and they afterwards went into the Wells Fargo Bank & Union Trust Company. That was the way that was.

Then—let me see—the Bank of America came into existence and they solicited us for accounts. They also took over a large number of our banking depositaries in the country. We have some 250 banks in the country. The Bank of Italy, in their branch banking, they took over a large number of

(Testimony of David Hiram Foote.)

these banks that we had already selected as depositaries, and they [257] were approved by our Board of Directors as depositaries. In that way we formed a connection with the Bank of America.

The Anglo California Bank, we had business with them many years ago, but I can't just remember when that was done. They had a special account that they paid us interest on. Then afterwards we opened a general banking account after we took over the Great Western. I think that was in 1930.

Q. So that your principal banking connections, the American Trust and its predecessor the Mercantile Trust Company, the Bank of California and the Crocker National Bank, you have had since approximately 1903?

A. Yes, sir. The others were taken in purely as matters of convenience and also they were able, they were willing to pay us interest on some of our accounts, 30-day accounts.

Q. Now, within recent years has the company had occasion to borrow moneys? A. No.

Q. When the company did borrow money where did it borrow money principally?

A. Oh, that was many years ago. It has been many, many years since we borrowed any money on notes. I think we borrowed money of the Hibernia Bank at one time.

Q. But it has been many, many years since the company——

(Testimony of David Hiram Foote.)

A. (Interposing) Thirty years ago since we borrowed [258] money, I think; yes.

Q. Now, what banking connections does the company have in New York City?

A. The Bankers Trust Company and the National City Bank of New York.

Q. How long have you had those banking connections?

A. 25 years I think, fully. I think the Bankers Trust Company, somewhere around 1912 to 1914, somewhere in there, we started business with them. That was about the time that we established a transfer agency for our stock in New York and we naturally went to the Bankers Trust Company.

Q. How long ago was the connection established with the National City Bank of New York?

A. About the same time; a little later, I think a year or two later.

Q. For what purposes do you maintain balances in those banks in New York?

A. The balance in the Bankers Trust Company is entirely for the purpose of paying checks that we draw on them to pay for material and supplies purchased in the east, in any of the esatern states. For instance, purchases from the General Electric Company, or the Westinghouse Company, we pay their bills usually by checks drawn on the Bankers Trust Company because it would be more convenient for them. We maintain a balance for that purpose

(Testimony of David Hiram Foote.)

and we also maintain it for paying [259] bond interest coupons in New York. For those two purposes I think is all we keep that bank account for.

Q. Now, in the National City Bank of New York do you keep that account for any particular purpose?

A. No, except that our dividend checks, while they are drawn on the American Trust Company on a dividend account, we have an arrangement by which those checks may be negotiated in New York City at the National City Bank of New York, but that arrangement is made entirely through the American Trust Company. We don't have any direct dealings on that subject. We keep a small balance there, some $100,000.

Q. Do you have deposits in any other banks in the United States outside of California?

A. We have an account in Chicago in the Continental National—I've forgotten the name.

Q. . The Continental Illinois Trust Company?

A. Yes—it was the Illinois Trust Company at one time. They changed the name. But that account is kept solely for the purpose of cashing coupons in Chicago, bond interest coupons. Our bond interest coupons on our first refunding bonds are payable in Chicago and in New York City and in San Francisco. That account in Chicago is kept solely for that purpose. We have no other use for it.

Q. Have you any other bankng accounts outside of California? [260] A. We have not.

(Testimony of David Hiram Foote.)

Q. Is it fair to say that all of your principal banking connections are in San Francisco?

A. I think so; absolutely.

Q. They have been there for over 30 years?

A. Yes.

Q. What trust company acts as trustee under the company's bond mortgage?

A. The American Trust Company; and they have a New York trustee, the City Bank-Farmers Trust Company.

Q. That is a co-trustee?

A. That is a New York trustee, a co-trustee; yes.

Q. What connection, if any, has the City Bank-Farmers Trust Company with the National City Bank?

A. I think, my recollection is that the National City Bank was the trustee, New York trustee, and then under amendment of the law they separated their trust department from their banking department and formed the City Bank-Farmers Trust Company. That company also took over the Farmers Trust of New York.

Q. Mr. Foote, has the American Trust Company and its predecessors been for many yeas the principal trustee under the various bond mortgages of the company?

A. Yes. There was one mortgage where the Bankers Trust Company was trustee, a general refunding mortgage. [261]

(Testimony of David Hiram Foote.)

Q. That has been paid off?

A. Yes. Those bonds were called and they have been paid off, all except about $20,000 which haven't been presented yet, but the money is in the hands of the trustee for that purpose.

Q. But the American Trust Company has always been the principal trustee?

A. Yes—well, not under that mortgage.

Q. I mean the principal——

A. (interposing) Yes.

Q. You have had many mortgages in the past?

A. Yes, but the American Trust Company has been the principal one, that is true.

Mr. Phleger: I offer in evidence a statement headed "Pacific Gas and Electric Company Corporate Chart Showing Applicant's Utility and Non-Utility Subsidiaries and the Percentage of Voting Securities of Each Such Subsidiary Owned as of June 30, 1940."

I might state that this exhibit has been prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: This chart will be received in evidence and marked as Applicant's Exhibit No. 12.

(The chart above referred to was marked Applicant's Exhibit No. 12 and received in evidence.) [262]

Mr. Troy: Have you an extra copy of that?

Mr. Phleger: I will give you one later if you want it.

(Testimony of David Hiram Foote.)

May that be received?

The Examiner: It has been received and marked as Applicant's Exhibit No. 12.

By Mr. Phleger:

Q. Mr. Foote, I direct your attention to Exhibit 12. Will you state whether or not that was prepared under your direction?

A. It was not prepared under my direction, but I have examined it and it is correct.

Q. It is correct as shown by the books and records of the Applicant? A. That is true.

Q. Will you state generally what it shows?

A. Well, it shows the names, subsidiaries of the company and the percentage of voting power owned by the Pacific Gas and Electric Company.

Do you want me to particularize further?

Q. Let me ask you this: The San Joaquin Light & Power Company, is that company now in process of dissolution?

A. The corporation. There is a San Joaquin Light & Power Company. The San Joaquin Light & Power Corporation is in process of dissolution at the present time.

Q. Has the Applicant acquired all of its properties? [263] A. Yes.

Q. The Valley Electrical Supply Company, what business does it engage in?

A. It engages purely in the sale of electrical equipment.

(Testimony of David Hiram Foote.)

Q. Its activities are entirely confined to the State of California, are they?

A. Entirely so; yes.

Q. The Arlington Properties Company, Ltd., what does that company do?

A. That company holds lands, in-operative lands that we don't wish to put under our first refunding mortgage. In other words, we want to sell them and that would relieve us of the necessity of obtaining releases of the mortgage, so that the lands are put in the name of the Arlington Properties Company.

Q. Is it a public utility? A. It is not.

Q. Are all of its properties located in the State of California? A. They are.

Q. What is the approximate book value of its assets?

A. $530,000-odd, $538,000, I think is correct. I know it is correct.

Q. The Crystal Lake Company, Ltd., what does that [264] company do?

A. That has water rights in the upper regions of Hat Creek.

Q. Is it a subsidiary of Arlington Properties Company, Ltd.?

A. Its stock is in the name of the Arlington Properties Company, Ltd.; yes.

Q. Are all of its properties located in the State of California? A. They are.

Q. And what is the approximate book value of those properties? A. Around $60,000.

(Testimony of David Hiram Foote.)

Q. The Western Canal Company, what does that company do?

A. The Western Canal Company is engaged in the sale of water for irrigation purposes.

Q. Are its properties entirely located in the State of California? A. They are; yes.

Q. What is the approximate book value of its assets? A. Approximately $900,000.

Q. Are all of these corporations California corporations? A. They are. [265]

Q. The Standard Pacific Gas Line, Inc., what is its business?

A. Its business, it is the owner of the natural gas line from lower California. It is owned in conjunction with the Standard Oil Company of California. We own 50 percent of the line and they own 50 percent of the line.

Q. You stated that it owns a pipe line from lower California. You mean from southern California?

A. I mean from southern California; yes.

Q. Is it a public utility company?

A. I believe not.

Q. Are all of its properties located in the State of California? A. Yes, they are.

Q. What is the total book value of your investment in that company?

A. Well, I think a little over $8,000,000. It is stated here as $8,370,000.

(Testimony of David Hiram Foote.)

Q The Vallejo Electric Light & Power Company, what is its business?

A. It is a public utility serving Vallejo and vicinity.

Q. What percentage of its stock is owned by the Pacific Gas and Electric Company?

A. 45.6 percent—something like that. Well, it is 45.8 percent as shown here.

Q. Are both the Standard Pacific Gas Line, Inc. and [266] the Vallejo Electric Light & Power Company California corporations? A. They are.

Q. Are all of the properties of the latter company located in the State of California?

A. They are.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 13 a statement headed "Pacific Gas and Electric Company Securities Issued by any Public Utility or Holding Company and Owned by the Applicant as of July 31, 1940."

This exhibit was also prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 13.

(The statement above referred to was marked Applicant's Exhibit No. 13 and received in evidence.)

(Testimony of David Hiram Foote.)

By Mr. Phleger:

Q. Mr. Foote, I direct your attention to Exhibit 13. Was it prepared under your direction?

A. I think you might say that, yes; in conjunction with the controller's department.

Q. Are the facts and figures appearing on it true and correct? A. They are.

Q. It shows, does it not, the stocks of the public [267] utilities owned by the Applicant as of July 31, 1940? A. It does.

Q. Has the company acquired any securities of any public utility or holding company since July 31, 1940? A. No, sir, it has not.

Q. So the statement is also correct as of this date? A. Yes, sir.

Q. Will you state whether or not these securities are in your possession as Treasurer?

A. Yes, they are.

Q. Physically in your possession?

A. Well, I think the Western Canal stock and the Vallejo Electric Light & Power Company stock are deposited with the American Trust Company as trustee under the first refunding mortgage.

The other stocks are small holdings and are in my possession. They came to us when we purchased one of our subsidiary companies, the Modesto Gas Company. They were owned by the Modesto Gas Company and we acquired ownership that way.

Q. So that all of the securities, with the exception of the Western Canal Company and the Vallejo

(Testimony of David Hiram Foote.)

Electric Light & Power Company, came to the company through the dissolution of the Modesto Gas Company? A. That is right. [268]

Mr. Phleger: I offer in evidence as Applicant's Exhibt 14 copies of the original Articles of Incorporation of the Pacific Gas and Electric Company and amendments thereto.

This exhibit also was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 14.

(The Articles of Incorporation above referred to were marked Applicant's Exhibit No. 14 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, addressing your attention to Exhibit 14, does that exhibit contain a true and correct copy of the original and amended articles of the Pacific Gas and Electric Company?

A. It does.

Q. The company is a California corporation, is it? A. Yes.

Q. And has had continuous existence since its first incorporation?

A. Yes it has, being October 1905.

Q. What statements does the company regularly send out to its stockholders?

(Testimony of David Hiram Foote.)

A. The annual statement for each year ended December 31, and also quarterly statements, interim quarterly statements for the quarters ending March, June and September. [269]

Q. When is the annual stockholders meeting of the company held?

A. It is held—where, did you say?

Q. When?

A. On the second Tuesday in April of each year.

Q. Is a copy of the annual report sent out to the stockholders in advance of that meeting?

A. Yes, we endeavor to do so and usually do.

Q. Sufficiently in advance so that it is received by the stockholders before the meeting?

A. That is the intention, yes. Of course, it is sometimes pretty hard to get that statement out before the annual meeting because it involves a great deal of detail, and we want to get the certificate of independent auditors, and all that sort of thing, and it takes a great deal of time and care in its preparation.

Q. It is the practice usually to send out the notice of the annual meeting and a form of proxy to the stockholders when the annual report is sent out to them?

A. No. We cannot get the annual report out quite in time for that. It is a little too short a time between—let me see, January, February—it is a little too short a time to ge that annual report out. If we wanted to get the annual report ready to send

(Testimony of David Hiram Foote.)

out with the proxy forms it wouldn't give sufficient time to get the proxies in. [270]

Q. How long prior to the annual meeting is it the practice to send out notice of the meeting and a proxy form?

A. Oh, about the middle of February.

Q. About the middle of February?

A. Yes.

Q. And the annual report goes out usually how long in advance of the meeting?

A. Oh, it is pretty hard to say.

Q. Approximately?

A. Oh, a week or ten days.

Mr. Phleger: I offer in evidence as Applicant's Exhibit No. 15 a bound volume which includes the annual reports of the Applicant to its stockholders for the years 1929 to 1939 inclusive.

This exhibit also was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 15.

(The bound volume of annual reports above referred to was marked Applicant's Exhibit No. 15 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, that exhibit contains, does it, copies of the annual reports I have just mentioned?

A. To the best of my knowledge and belief it does. These were gathered under my direction in

(Testimony of David Hiram Foote.)

my department. I [271] believe that is a complete statement.

The Examiner: Does that include only the annual reports, or does it include the interim reports?

The Witness: Only the annual reports.

Mr. Phleger: Only the annual reports.

I now offer in evidence as Applicant's Exhibit 16 a chart headed "Pacific Gas and Electric Company Chart Showing Members of the Board of Directors, January 1, 1920 to September 30, 1940." I ask that it be received in evidence.

The Examiner: It will be received in evidence and marked Applicant's Exhibit 16.

(The chart above referred to was marked Applicant's Exhibit No. 16 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, has Exhibit 16 been checked by you? A. Yes.

Q. And does it show accurately the statistics with respect to the names and dates of election, and length of service of all of the directors of the Pacific Gas and Electric Company during the period stated?

A. It does. There are two inaccuracies in it. One is in the spelling of Mr. Livermore's name. It is put down here as "Livernore" instead of "Livermore".

Another inaccuracy is in the initials of Mr. Wal-

(Testimony of David Hiram Foote.)

lace Alexander's name. His name is W. M. and it is put down here [272] as "W. H."

The Examiner: W. M. Alexander is correct?

The Witness: Yes. It hasn't been corrected on the copy I have here.

The Examiner: The copy that has been received in evidence has been corrected.

The Witness: Oh, that is all right then. The one I have hasn't been corrected. This one (indicating) has been corrected. That is right.

How about Mr. Livermore's name? That hasn't been corrected.

By Mr. Phleger:

Q. Your comment is correct. Aside from that, it is correct? A. Yes.

Q. Now, you will notice——

Mr. Gerdes (interposing): Off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record.

By Mr. Phleger:

Q. Mr. Foote, the chart indicates by horizontal lines the service of each director, does it not?

A. It does.

Q. When a horizontal line terminates by a heavy line, [273] and a new name appears as a director, is it a fact that the records show that the new director succeeds to the vacancy created by the death or resignation of the man whose name appears on the same line but to the left?

(Testimony of David Hiram Foote.)

A. That is right; yes.

Q. For example, let us take line 5, William G. Henshaw. A. Yes.

Q. On the same line to the right his name is followed by Charles L. Barrett.

A. That is right.

Q. Do the minutes show that Mr. Barrett was elected to the vacancy caused by the death of Mr. Henshaw? A. Yes, sir.

Q. And do the records show that Mr. Chickering succeeded to the vacancy created by the resignation of Mr. Barrett? A. It does.

Q. Similarly with respect to——

A. (interposing) John A. Britton, the same thing.

Q. That is true also as to each of the directors named? A. Yes.

Q. Now, let us go down this chart and take the directors, say, in 1921. On the first line that is your own name? A. Yes, sir. [274]

Q. Were you at that time a Vice-President of the company? A. 1914?

Q. This is 1921 we are talking about.

A. Yes, that is right.

Q. Now, the next line is Mr. C. O. G. Miller. He was then a director, was he not?

A. He was.

Q. He is now a director? A. He is.

Q. And he was first elected in 1921?

A. Yes, sir.

(Testimony of David Hiram Foote.)

Q. And served continuously since that date?

A. Yes, sir.

Q. The next line is Mr. John D. McKee. He was a director in 1921, was he not? A. He was.

Q. He is a director today?

A. Yes, and has served continuously since that time.

Q. And has served continuously since his electon in 1914? A. Yes, he has.

Q. Who is Mr. McKee?

A. He is Chairman of the Board, I believe, of the American Trust Company. [275]

Q. Norman B. Livermore, he was a director in 1921, was he not? A. He was.

Q. He is a director now? A. Yes.

Q. And he has served continuously since his election in April of 1920, has he not?

A. Yes.

Q. He served as a director prior to that date also, did he not?

A. I couldn't tell you that. I have forgotten that.

Q. Just refer to the chart.

A. I don't think he did, did he?

Q. Prior to 1920?

A. That was when he was elected a director.

Q. Well, it is not important, but you will remember when he resigned when he went to war?

A. Oh, I do most decidedly. I had forgotten that.

(Testimony of David Hiram Foote.)

Q. He had been director for many years before the war, had he not?

A. I believe that is true; yes.

Q. William G. Henshaw, who is he?

A. William G. Henshaw, he was a San Francisco capitalist and businessman.

Q. He had served for many years as a director? [276]

A. Yes.

Q. His position is now occupied by Mr. A. L. Chickering, is it not? A. Yes, that is right.

Q. And Mr. Chickering has served continuously since 1927? A. That is right.

Q. Now, who is John A. Britton, who was a director in 1921?

A. He was the first president of the Pacific Gas and Electric Company and afterwards its vice-president and general manager.

Q. He served as a director for many years?

A. Oh, yes.

Q. And was one of its principal executive officers? A. Absolutely; yes, sir.

Q. He had been one of the principal officers of one of the predecessor companies of the Pacific Gas and Electric Company?

A. Yes. He was president of the Oakland Gas Light & Heat Company.

Q. His position is now occupied by Mr. Paul Downing? A. That is right.

(Testimony of David Hiram Foote.)

Q. Now, John S. Drum, he was a director in 1921, was he not? [276-A] A. Yes, he was.

Q. And he continued as a director until 1930?

A. That is right.

Q. Who was Mr. Drum?

A. He was a brother of Frank G. Drum, and he was one time president of the Mercantile Trust Company, afterwards American Trust—it may have been the American Trust when he was president.

Q. He served for many years as a director, did he not? A. Yes, sir, he did.

Q. And was he extremely active in its affairs?

A. Oh, yes.

Q. Particularly in its financial affairs?

A. Yes, I think so; yes, sir.

Q. His position on the directorate is now filled by James B. Black? A. Yes; that is right.

Q. Now, W. E. Creed, he was a director in 1921, was he not? A. Yes.

Q. He was president of the company for a period of years? A. Yes, for a period of years.

Q. His position is now occupied by John P. Coghlan, is it not? A. Yes, it is. [277]

Q. Mr. A. F. Hockenbeamer, he was a director in 1921? A. Yes.

Q. And what other positions did he hold at that time?

A. In 1921 I think he was Treasurer, Vice-President and Treasurer.

(Testimony of David Hiram Foote.)

Q. He later succeeded Mr. Creed as President, did he not? A. He did.

Q. His position as director is now filled by Mr. Fogarty? A. Yes, sir.

Q. Frank B. Anderson was a director in 1921?

A. Yes.

Q. Did he serve for many years as a director of the company? A. Yes, for many years.

Q. Did Mr. McIntosh from time to time alternate with him in that position?

A. Yes, a few times. Mr. Anderson would go out of town—he went abroad once and he resigned and Mr. McIntosh—they were both officials of the Bank of California, and Mr. Anderson was Chairman of the Board and Mr. McIntosh was President. When Mr. Anderson resigned Mr. McIntosh would take his place temporarily.

Q. And on the death of Mr. Anderson, Mr. McIntosh was [278] elected to his vacancy, was he not? A. Yes.

Q. Was Mr. Anderson active in the affairs of the company? A. Yes, he was.

Q. He was very active, wasn't he?

A. Extremely active; yes.

Q. Did he pay attention particularly to the financial matters?

A. Indeed he did. He was on our Executive Committee.

Q. H. E. Bothin, he was a director in 1921?

A. Yes.

(Testimony of David Hiram Foote.)

Q. Who was he?

A. Mr. Bothin was a local businessman and capitalist, I guess you would call him.

Q. He was a substantial stockholder in the company? A. Yes.

Q. And a San Francisco resident?

A. Yes.

Q. His position is now occupied by A. E. Wishon, is it not? A. Yes, sir.

Q. Mr. F. G. Drum was in 1921 a director of the company? A. Yes.

Q. Did he occupy any official position? [279]

A. He was president and resigned and Mr. Creed took his place.

Q. Did he become Chairman of the Board?

A. I don't think so—I have forgotten that.

Q. He remained active, did he not, in the affairs of the company?

A. Yes, he did. He remained active in the affairs of the company. I don't think that we have ever utilized the office of Chairman of the Board to my recollection. If so, it was for a very short period.

Q. His office was subsequently filled by W. M. Alexander, was it not? A. Yes.

Q. Who was Mr. Alexander?

A. He was a San Francisco capitalist associated largely, I think, with the sugar industry in Hawaii.

Q. That office of director is now filled by Mr. Silas H. Palmer, is it not? A. Yes, it is.

(Testimony of David Hiram Foote.)

Q. Who was John A. McCandless?

A. He was a local businessman, also largely interested in the Hawaiian sugar industry.

Q. Was he a large stockholder of the company?

A. Yes.

Q. Is the position which he then held, the office [280] now held by Herbert C. Freeman?

A. Yes, sir.

Q. Now, W. H. Crocker was a director in 1921, was he not? A. Yes, he was.

Q. Who was W. H. Crocker?

A. He was president of the Crocker National Bank, then Crocker-Woolworth, or Crocker First National Bank—there were several changes in name—but he was always president of that bank.

Q. Had he been a director for many years?

A. Yes.

Q. And continued as a director until some time in 1937 when he died? A. That is right.

Q. And was his position filled by his son?

A. By his son, W. W. Crocker. He is now president of that bank.

Q. Was Mr. Crocker and his family and related interests heavily interested in the company?

A. Yes, they were always.

Q. And was Mr. Crocker connected with one of the predecessor companies of the P. G. & E.?

A. I believe he was; yes, I think he was connected with the California Corporation to the best of my recollection. [281]

(Testimony of David Hiram Foote.)

Q. And Mr. F. T. Elsey was also a director in 1921, was he not? A. Yes.

Q. Who was he?

A. He was a local businessman, a capitalist, and he was president of the American Trust Company. He was also president, I think, of the Palace Hotel Company.

Q. Did he represent any particular interest, do you recall?

A. Yes. He represented the Tevis Estate.

Q. An old California estate? A. Yes.

Q. He continued as a director until his death early in 1938, did he not? A. He did.

Q. And his place on the Board has been filled and is now held by Mr. Nichols?

A. Yes; that is right.

Q. Was Mr. Elsey active in the affairs of the Pacific Gas and Electric Company?

A. Very decidedly so.

Q. He was an extremely active director?

A. Yes. He was a very warm friend of Mr. Hockenbeamer's and they, I know they were very active together in talking about the affairs of the company. [282]

Q. He took a great deal of interest in it?

A. Yes; a great deal of interest.

Q. Particularly in financial matters?

A. Absolutely.

Mr. Phleger: I offer in evidence as Applicant's Exhibit No. 17 a chart headed "Pacific Gas and

(Testimony of David Hiram Foote.)

Electric Company Chart Showing Members of the Executive Committee of the Board of Directors, January 1, 1920 to September 30, 1940."

This material was also prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: The chart will be received in evidence as Applicant's Exhibit No. 17.

(The chart above referred to was marked Applicant's Exhibit No. 17 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, have you checked Exhibit 17?

A. Yes.

Q. Are the facts and figures there set forth true and correct?

A. Now, I haven't one of the corrected forms, but in the original form there were some slight errors.

Mr. Phleger: Off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record. [283]

By Mr. Phleger:

Q. So Exhibit 17 is true and correct, is it not?

A. Yes, sir.

Q. That chart was prepared in the same manner as the preceding chart, was it not?

A. Yes, it was.

(Testimony of David Hiram Foote.)

Q. And it shows on separate horizontal lines the membership during the period indicated of members of the Executive Committee? A. Yes.

Q. And the particular position on the Executive Committee occupied by any designated director is shown by the minutes to have been occupied by the director whose name appears on the chart on the same line, but to the right? A. That is right.

Q. For example, let us take the position of F. G. Drum. His position on the Executive Committee was subsequently filled by Mr. Elsey, was it not? A. Yes.

Q. And the same position is now filled by Mr. Palmer? A. Yes, that is right.

Q. And those successions to the particular office are shown by the minutes of the Executive Committee, are they not?

A. Yes—the minutes of the Board.

Q. Of the Board—you are correct. The members of [284] the Executive Committee are elected by the Board, are they not? A. They are.

Q. How many members are there now in the Executive Committee?

A. There are five members. The President is an ex-officio member, in accordance with the by-laws. The by-laws provide that the president shall be an ex-officio member of the Committee. There are four other members of the Board on that Committee.

Q. At one period between 1930 and 1935 were there six members on the Executive Committee?

(Testimony of David Hiram Foote.)

A. There were; yes.

Q. But there are now but five members?

A. Only five now.

Q. The position filled by Mr. Frank B. Anderson was not filled after his death?

A. I believe that is true; I know it is so.

Q. Now, the men whose names appear on this sheet as members of the Executive Committee are the men whom I have just questioned you with respect to their service as directors?

A. Yes; that is right.

Q. The *Board* now consists of the President, Mr. Black, as an ex-officio member——

A. (interposing) That is right. You said the "Board".

Q. I mean the Executive Committee. [285]

A. Yes.

Q. The Executive Committee consists of Mr. Black, ex-officio member, President, Mr. Palmer?

A. Yes.

Q. Mr. Miller? A. Yes.

Q. Mr. Chickering? A. Yes.

Q. And Mr. Livermore?

A. That is right.

Q. Do other officers of the company regularly attend meetings of the Executive Committee?

A. They do.

Q. Who are they?

A. Mr. Downing, First Vice-President and General Manager; Mr. Wishon, Vice-President and As-

(Testimony of David Hiram Foote.)

sistant General Manager; Mr. Coghlan, Vice-President and Assistant to the President—they are invited by the Executive Committee, that is, they have been invited by resolution of the Executive Committee to attend meetings of the Committee regularly?

Q. Yes.

A. I attend as Secretary under the by-laws. The by-laws provide that the Secretary shall be Secretary of the Executive Committee.

Q. You keep the minutes, do you? [286]

A. I do.

Q. What is the procedure at the meetings of the Executive Committee?

A. Well, the first proceeding is a reading of the minutes of the prior meeting.

Then the General Manager makes a verbal report of the company's operations during the past week compared with the same week in the year before.

His report covers, he reads his report from prepared reports, written reports. He goes over the salient features of them. One is a report of the electric output; another is a report of rainfall and snow coverage.

Then there is a report of gas output, natural and also manufactured.

Then there is also a report of new business connected during the week compared with the same week the year before.

Then he submits a list of construction jobs and estimated cost of them. They are gone over very

(Testimony of David Hiram Foote.)

carefully and explained to the Committee. Then the Committee approves them, or disapproves them. They rarely disapprove because they are always in good shape.

Then the General Manager also submits resolutions authorizing the execution of, perhaps, quick claim deeds for rights of way that are no longer useful to the company, or for changes in the rights of way, easements that the company has. [287]

Then he may submit resolutions authorizing the acceptance of licenses issued by the Federal Power Commission, or applications for amendments to such licenses.

Anything of that nature that has to be acted on he submits in resolution form and the resolutions are adopted.

That is about what the General Manager does.

Then the other officers of the company, the Vice-President and Assistant to the President, may make a report on matters coming under his immediate jurisdiction.

Also the Vice-President and Assistant to the General Manager makes a report, a verbal report, of matters coming under his jurisdiction.

The President submits a regular weekly report which shows the condition of the finances of the company, cash, and his report also may have in it a complete report of consumers, consumers' report, number of consumers in each division.

(Testimony of David Hiram Foote.)

That report may also cover a report which is submitted monthly of completed G. M. jobs and those are gone over. That report shows the amount expended, the amount estimated for each job, and the amount expended, and the committee then by resolution approves any over-expenditures, amounts expended over estimates, and cancels any amounts, any estimates that are made that are not required after the job is completed. That report also shows the total expenditures made by the company, construction expenditures, and that is approved by [288] the Committee.

So the whole thing is approved.

Then the President will bring to the attention of the Committee all important matters that may affect the company's interests. He discusses them very fully and gives his ideas of what should be done, what he has done. I think he invariably states, "Now, if any of the members of the Committee disapprove, or would like to make any suggestions, why I am only too glad to receive them."

Perhaps no action is taken, but what has been done in the company's affairs is brought up each week to date so that the Committee is fully informed as to all matters going on. For instance, this Hetch Hetchy business, and the conditions all over the company's territory that might be important, such things are discussed, and other things that the Committee should be informed about.

(Testimony of David Hiram Foote.)

Q. How often does the Executive Committee meet? A. Once a week always.

Q. Does it meet regularly?

A. Regularly on Tuesday afternoon.

Q. Is it the practice to discuss at numerous meetings important subjects, that is, over a series of meetings? A. It is.

Q. Do the members of the Executive Committee discuss and debate freely the matters which are brought before it? [289]

A. Absolutely; very freely.

Q. They are quite outspoken, are they?

A. Yes.

Q. How about the officers, other than the President, that attend those meetings, do they all discuss matters freely? A. Yes, they do.

Q. And their opinion and advice is frequently asked by the other members of the Executive Committee? A. It is.

Q. Is it the practice of the President, in connection with important matters, to bring them up for discussion usually well in advance of the time of decision? A. Yes, it is.

Q. And it is a fact that he usually does not formulate his own recommendation until after considerable discussion, sometimes over a long period, with the Executive Committee?

A. Yes, I think that is exactly right.

Q. He knows what the Executive Committee

(Testimony of David Hiram Foote.)

views are on important matters before he makes a recommendation?

A. Absolutely. Sometimes the Executive Committee may take a little different view of something and then they will discuss that and it is always thrashed out to satisfaction so that when final action is taken it is unanimous.

Q. And the President's views with respect to important matters are very often colored or changed, or otherwise [290] acted upon by the viewpoint of his Executive Committee, are they not? A. I think so; yes.

Q. Does the Executive Committee consider and debate important rate matters? A. Yes.

Q. All important rate matters are taken up with the Committee? A. Yes, they are.

Q. And does it also pass on all salary matters of more than $300? A. It does; yes.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 18 a chart headed "Pacific Gas and Electric Company Chart Showing Principal Officers, January 1, 1920 to September 30, 1940, and Lengths of Service with P. G. & E. and Predecessors."

This also was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: The chart will be received in evidence and marked Applicant's Exhibit No. 18.

(The chart above referred to was marked Applicant's Exhibit No. 18 and received in evidence.)

(Testimony of David Hiram Foote.)

The Examiner: Before we proceed I think we had better take a short recess.

(Whereupon a short recess was taken after which proceedings were resumed as follows:) [291]

The Examiner: We will resume now.

Are you ready, Mr. Phleger?

Mr. Phleger: Yes.

The Examiner: You have just introduced Exhibit 18.

By Mr. Phleger:

Q. Mr. Foote, have you checked Exhibit 18 and are all of the facts shown there true and correct?

A. Yes, they are.

Q. Now, that chart shows, does it not——

A. (interposing) May I say that there was one correction I found there. I don't know whether that has been made on the chart you have here, that date here (indicating).

The Examiner: As to yourself, Mr. Foote?

The Witness: Yes sir.

The Examiner: August 16th?

The Witness: Yes.

The Examiner: The document received in evidence is corrected to read August 16, 1927.

The Witness: That is right.

The Examiner: The date you were elected vice-president secretary and treasurer.

The Witnes: That is right.

The Examiner: All right.

The Witness: Well, August 16, 1907——

(Testimony of David Hiram Foote.)

The Examiner (interposing) '27. [292]

The Witness: '27; that is right; that is right.

By Mr. Phleger:

Q. Now, Mr. Foote, this chart shows the various positions held by the various officers of the company during the period 1920-1940, does it not?

A. It does.

Q. Each horizontal line is an office and the successive names indicate the successive holders, is that correct? A. They do; that is right.

Q. And following on the right opposite the name of the present incumbent is the length of service of that incumbent officer with Pacific Gas and Electric Company and its predecessor? A. Yes.

Q. Now, let us take, for example, the president, Mr. Black. The chart shows, does it not, that he has been ten years with the Pacific Gas and Electric Company, that he was with its predecessors for 18 years, and that the total service with P.G.&E. and its predecessors is 28 years.

A. Yes, that is right.

Q. Let us take yourself, for example; that shows 35 years service with the Pacific Gas and Electric Company? A. That is right.

Q. That is as long as the company has been in existence? [293] A. Yes sir.

Q. It shows in the next column two years service with predecessors. That was your service with the San Francisco Gas and Electric Company?

A. No.

(Testimony of David Hiram Foote.)

Q. California——

A. (interposing) California Gas and Electric Corporation.

Q. California Gas and Electric Corporation, making a total service of 37 years, is that correct?

A. That is right; that is correct.

Q. Now, I direct your attention to the chart which shows that Mr. Hockenbeamer succeeded Mr. Creed as president on August 14, 1927.

A. That is correct.

The Examiner: 16th.

By Mr. Phleger:

Q. 16th; that is the date that you corrected.

A. No, no—that is correct, August 16th, 1927.

Q. That is right. That is the same date that you corrected, I believe.

On that date Mr. Hockenbeamer ceased to be treasurer of the company, did he not? A. He did.

Q. And on that same date you succeeded Mr. Hockenbeamer [294] as treasurer.

A. I did, that is right, retaining my positions as vice president and secretary.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 19 a statement headed "City Gas & Electric Company, dates of meetings of Executive Committee and Board of Directors from June 1, 1930 to September 10, 1940; the attendance of representatives of the North American Company or Western Power Corporation being shown at the end of the statement".

(Testimony of David Hiram Foote.)

This compilation was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: This document consisting of three typewritten pages will be received in evidence and marked Applicant's Exhibit 19.

(The 3 typewritten pages referred to above was marked Applicant's Exhibit No. 19 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, this exhibit has been checked by you or your office, has it?

A. Yes; it was prepared in my office from the records.

Q. And it is true and correct?

A. It is true and correct, I believe, without question.

Q. The meetings which Mr. Guy C. Earl attended are indicated by an asterisk, are they not?

[295]

A. No.

Q. Or, the meetings he did not attend are marked with an asterisk?

A. Yes, he attended all meetings except those that are marked with an asterisk.

Q. During his term of office? A. Yes sir.

Q. He was a fairly regular attendant?

A. Oh, yes, very.

Q. Mr. Black, while an officer of the North American Company and while a director of the

(Testimony of David Hiram Foote.)

Pacific Gas and Electric Company, that is to say, in the years 1930 to November 1935, attended but four meetings, is that correct?

A. That is correct, four meetings of the Board of Directors.

Q. That is right.

A. And one meeting of the Executive Committee.

Q. The meetings he attended of the Board of Directors were June 18, 1930; July 22, 1931; September 4, 1935 and September 11, 1935?

A. That is correct.

Q. And the meeting of the Executive Committee which he attended was on June 24, 1930?

A. That is correct.

Q. Now, Mr. Gruhl, who was an officer of the North [296] American Company and was a director of the Pacific Gas and Electric Company——

A. (interposing) Yes.

Q. For the period June 18, 1930 to January 22, 1933 attended but one meeting, that of June 18, 1930? A. That is correct.

Q. Mr. F. W. Doolittle, an officer of the North American Company who served as a director from January 17, 1934 to November 23, 1936 attended but one meeting, that of September 21, 1936, is that correct? A. That is correct, yes sir.

Q. F. L. Dame, an officer of North American who served as a director from February 15, 1933

(Testimony of David Hiram Foote.)

until December 30, 1933 never attended a single meeting, did he? A. Never; he did not.

Q. Mr. James F. Fogarty, an officer of North American Company, who is now a director and has been a director since December 18, 1935, has never attended a meeting, is that correct?

A. That is correct.

Q. Mr. H. C. Freeman, an officer of North American Company, who is now a director of Pacific Gas and Electric Company, and who has been a director since December 16, 1936, has never attended a meeting of the Board of Directors, is that correct? [297]

A. That is right; that is right.

Mr. Phleger: I now offer in evidence and ask it be marked Applicant's Exhibit 20 a statement headed "Pacific Gas and Electric Company—" this is sheet 1—"twenty largest holders of 6% first preferred stock, June 30, 1940"; a second sheet headed "Twenty largest holders of 5½% first preferred stock, June 30, 1940", and a third sheet headed "Twenty largest holders of common stock, June 30, 1940."

This exhibit also was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: As has been indicated the exhibit consists of three typewritten pages and will be received as Applicant's No. 20.

(Testimony of David Hiram Foote.)

(The 3 typewritten pages referred to above were marked Applicant's Exhibit 20, and were received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, was Exhibit 20 prepared under your direction? A. It was.

Q. And it is true and correct, is it?

A. Yes sir.

Q. The names appearing on it appear on your stock books and records? A. They do.

[298]

Q. And the addresses are the addresses which are also registered on your books?

A. That is right; yes, that is right.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 21 a statement headed "Pacific Gas and Electric Company, distribution of each class of stock as to number of shares held, June 30, 1940."

This also was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: The document will be received in evidence and marked Applicant's Exhibit No. 21.

(The statement referred to above was marked Applicant's Exhibit No. 21 and was received in evidence.)

By Mr. Phleger:

Q. Was Exhibit 21 prepared under your direction? A. It was.

Q. And is it true and correct?

(Testimony of David Hiram Foote.)

A. It is, I believe.

Q. It shows that the company as of June 30, 1940, had 95,836 stockholders; does it not?

A. It does.

Q. Of whom 16,988 were stockholders of 5½ per cent preferred? A. Yes sir. [299]

Q. 42,206 were holders of 6 per cent first preferred and 36,642 were holders of common stock?

A. That is right.

The Examiner: Some persons, of course, own both or all three of these same classes of stocks so there might be some duplications there?

The Witness: Yes, there might be some, yes.

By Mr. Phleger:

Q. The holder of each class of stock is counted in this compilation as a stockholder?

A. I think that is right, yes, yes.

Q. So that if the same stockholder owned three classes of stock he would appear in this statement three times?

A. No, you know that question came up and it has slipped my mind just how that was handled. I remember Mr. Holt and I talked about that. I think that this would show as three stockholders.

The Examiner: I would think so because the stock record books would show different——

The Witness (interposing): I think so; I think that is the only way we could do it.

(Testimony of David Hiram Foote.)

By Mr. Phleger:

Q. Yes, because you have separate stock books for each class of stock?

A. Yes, each one, separate records. I think it would [300] show as three stockholders. You know, couldn't I——

Q. (interposing): We will verify that.

A. Could I verify it later?

Q. Yes, indeed. We will do that before you finish.

A. I would like to do that with Mr. Holt, our stock transfer agent who prepared it under my direction. I remember we talked about it. I have forgotten now just——

Q. (interposing) You want to remember that this all goes down and we have to pay for this record. A. Oh.

Mr. Phleger: I offer as Applicant's Exhibit 22 a statement entitled Pacific Gas and Electric Company, Number of shares of each class of stock held by residents of California and percentage of all stockholders residing in California, June 30, 1940."

The Examiner: It will be received in evidence and marked Applicant's Exhibit 22.

(The statement referred to above was marked Applicant's Exhibit No. 22 and was received in evidence.)

Mr. Phleger: This was also prepared at the request of counsel for the Securities and Exchange Commission.

(Testimony of David Hiram Foote.)

By Mr. Phleger:

Q. Was this exhibit prepared under your direction? A. It was. [301]

Q. It is true and correct?

A. Yes, I believe so.

Q. Now, this shows that on June 30, 1930——

The Examiner (interposing): '40.

By Mr. Phleger:

Q. (continuing) 1940, residents of California owned 5,585,241 shares of stock, is that correct?

A. That is correct.

Q. And that they constituted 72.3 per cent of all of the holders? A. Yes, that is right.

Q. Now, it will be possible, will it not, by dividing the total number of shares of stock outstanding on June 30, 1940, by the total number of shares of stock held by residents of California, namely, 5,585,241 to determine the total percentage of stock owned by residents of California, will it not?

A. I think so, yes. There are about eleven million shares outstanding, and this is about half, I think.

Mr. Phleger: Subject to verification by counsel I will state that my computations show that 48 per cent of the outstanding stock of the company as of June 30, 1940, is owned by residents of California.

The Witness: That is about right.

Mr. Phleger: And my computation, subject to verification [302] also, shows that on that date 71.8 per cent of all of the preferred stock was owned by residents of California and that 27.6 per cent of

(Testimony of David Hiram Foote.)

the common stock was owned by residents of California.

By Mr. Phleger:

Q. Those figures sound about right, do they?

A. They sound about right, yes sir.

Q. If my mathematics are correct?

A. I think that is about right.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 23 statement headed "Pacific Gas and Electric Company, statement showing total number of votes cast and the number of votes cast by the North American Company, and its known subsidiaries or affiliates at each annual stockholders meeting from 1930 to 1940 inclusive."

This statement was prepared also at the request of counsel for the Securities and Exchange Commission.

The Examiner: The instrument will be received in evidence and marked Applicant's Exhibit 23.

(The statement referred to above was marked Applicant's Exhibit No. 23 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, was Exhibit 23 prepared by you or under your direction? A. It was. [303]

Q. And are the facts and figures there set forth true and correct.

A. I believe so, without question.

(Testimony of David Hiram Foote.)

Q. Now, that exhibit shows the dates on which the annual stockholders meetings were held in the period 1930 to 1940, does it not? A. It does.

Q. In the next column are the total votes cast?

A. That is correct.

Q. And in the following columns are the names of the North American Company and all of its known subsidiaries or affiliates and the number of shares voted by each of them respectively?

A. That is right.

Q. Either in person or by proxy?

A. That is right.

Q. By the way, do you know of any meeting of stockholders at which Frank L. Dame, Edward Gruhl, Guy Earl, F. W. Doolittle, J. F. Fogarty or Herbert C. Freeman was ever present in person?

A. I think none of them except Mr. Earl. Guy Earl may have been present—I couldn't say that—but he was living here in California.

Q. He may have been present?

A. He may have been present, yes. [304]

Q. None of the others have been?

A. None of the others have been.

Q. By the way, do you have a fairly large attendance at your stockholders meetings?

A. I think from 100 to 150 people.

Q. You have 100 to 150 people at your stockholders meetings? A. Yes sir.

Q. Where are they held?

A. In San Francisco at the office of the company, main office of the company.

(Testimony of David Hiram Foote.)

Q. There is an auditorium there, is there not, in which the meetings are held?

A. Yes, there is.

Q. Is there usually considerable newspaper publicity respecting those stockholders meetings?

A. Yes, quite a little.

Q. The stockholders show a considerable interest in those meetings?

A. Oh, yes, they do.

Q. What was the Western Power Corporation?

A. It was a subsidiary of the North American Company.

Q. Did it hold for a considerable period stock of Pacific Gas and Electric Company received in the 1930 transaction? [305] A. Yes, it did.

Q. This chart would indicate that between April 14, 1936 and April 13, 1937 the stock previously held by Western Power Corporation came into the possession of North American Company or other affiliates. A. Yes, that is right.

Q. What is Noxid & Co.?

A. It is a subsidiary of the North American Company, so I have been informed.

Q. And what is Nunn & Co.?

A. The same, a subsidiary of the North American Company.

Mr. Pheleger: I offer in evidence as Applicant's Exhibit 24 a statement headed "Pacific Gas and Electric Company, dividends paid on each class of stock, years 1930-1939 inclusive."

(Testimony of David Hiram Foote.)

This statement was also prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 24.

(The statement referred to above was marked Applicant's Exhibit No. 24 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, was Exhibit 24 prepared under your [306] direction and are the facts thereon set forth true and correct? A. Yes.

Q. Now, this exhibit shows by year the actual cash paid out as dividends on the various classes of stock of the company, does it not? A. It does.

Q. With respect to the common stock it not only shows the dollar amount, but also the percentage which the cash dividends bore in relation to the par value of the outstanding stock?

A. Yes, that is right.

Q. During this entire period what was the par value of the common stock?

A. I have forgotten when that par value was changed. It was originally $100 a share and then afterwards changed—the articles of incorporation were changed, and it was reduced to $25 a share.

Q. But whether 25 or 100 the percentage is correct?

(Testimony of David Hiram Foote.)

A. That is right; that doesn't affect this percentage.

Q. Yes. Now, during the years 1930 through 1932 it shows common dividends at the rate of 8 per cent. It shows in 1933 dividends at the rate of 7 per cent. During 1933 how was that 7 per cent in dividends made up?

A. Well, let me see—they are paid quarterly, so [307] that some of them were at the rate of 8 per cent, and I guess one was at the rate of 6. That would make it, wouldn't it?

Mr. Gerdes: Two.

The Witness: Two, that is right; two at the rate of 6.

By Mr. Phleger:

Q. That would be the first two quarterly dividends at the rate of 8 per cent——

A. 8 per cent; the last at the rate of 6.

Q. 6, and the dividends remained at the rate of 6 during the calendar years 1934 and 1935, and up until the last quarter in 1936?

A. That is right.

Q. Is that correct? A. That is correct.

Q. So that the 6½ per cent dividend paid in 1936 was a 6 per cent dividend for the first three quarters? A. Three-quarters, that is right.

Q. And an 8 per cent dividend for the last quarter? A. That is right.

Q. Now, all of the dividends shown on this compilation were cash dividends, were they not?

(Testimony of David Hiram Foote.)

A. Yes, they were.

Q. It will be understood in my questions that when I refer to an 8 per cent dividend for a shorter period than a year I refer to the 8 per cent for the period and not for the [308] year.

A. It would be at the rate of 8 per cent per annum.

Q. That is right. A. Yes sir.

Mr. Phleger: I offer as Applicant's Exhibit 25 a statement prepared at the request of counsel for the Commission headed "Pacific Gas and Electric Company, record of attendance at meeting of Board of Directors and Executive Committee of the present members thereof", during the period "January 1, 1930 to September 30, 1930."

The Examiner: It will be received in evidence and marked Applicant's Exhibit 25.

(The statement referred to was marked Applicant's Exhibit No. 25 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, was this exhibit prepared under your direction and is it true and correct?

A. Yes, it was, and it is correct.

Q. Now, going down the various members of your present Board of Directors and officers it shows that before Mr. Black became president that he attended only one out of the three meetings of the Executive Committee. A. That is right.

(Testimony of David Hiram Foote.)

Q. But that since he became president out of 255 meetings he has attended 240 or 94 per cent?

[309]

A. That is right.

Q. And that whereas prior to his becoming president he attended but four meetings of the Board of Directors out of 63 or 6 per cent, that since he became president he has attended all of the 60 meetings which have been held by the company?

A. That is right.

Q. The statement shows that Mr. Chickering has attended 81 per cent of the Executive Committee meetings and 77 per cent of the directors meetings, is that correct?

A. That is right; that is correct.

Q. It shows that Mr. Coghlan has attended 93 per cent of the Executive Committee meetings and 96 per cent of the directors meetings?

A. That is correct.

Q. Mr. Coghlan is not a member, as I understand it, of the Executive Committee, but is by resolution expected to attend?

A. That is the idea, yes, invited to attend by resolution.

Q. It shows that Mr. W. W. Crocker has attended 66 per cent of the directors meetings, is that correct? A. That is correct.

Q. It shows that Mr. Downing has attended 95 per cent of the Executive Committee meetings and 94 per cent of the [310] directors meetings, is that correct? A. That is correct.

(Testimony of David Hiram Foote.)

Q. It shows that Mr. J. F. Fogarty of the North American Company has attended none of the 59 meetings of the Board of Directors since he became a director, is that correct?

A. That is correct.

Q. It shows that you have attended 98 per cent of the meetings of the Executive Committee and 100 per cent of the meetings of the Board of Directors? A. That is correct.

Q. It shows, does it not, that of the 44 meetings that have been held since Mr. Freeman became a director that he has attended none of them?

A. That is correct.

Q. It shows, does it not, that Mr. Livermore attended 93 per cent of the meetings of the Executive Committee and 92 per cent of the meetings of the Board of Directors? A. That is correct.

Q. It shows, does it not, that Mr. McIntosh has attended 97 per cent of the meetings of the Executive Committee and 85 per cent of the meetings of the Board of Directors? A. That is correct.

[311]

Q. It shows, does it not, that Mr. John D. McKee has attended 88 per cent of the meetings of the Board of Directors? A. That is correct.

Q. It shows, does it not, that Mr. C. O. G. Miller has attended 80 per cent of the meetings of the Executive Committee and 81 per cent of the meetings of the Board of Directors?

A. That is correct.

(Testimony of David Hiram Foote.)

Q. It shows, does it not, that Mr. Nichols has attended 90 per cent of the meetings of the Board of Directors? A. That is correct.

Q. It shows, does it not, that Mr. S. H. Palmer has attended 92 per cent of the meetings of the Executive Committee and 85 per cent of the meetings of the Board of Directors?

A. That is correct.

Q. It shows, does it not, that Mr. Wishon had attended 85 per cent of the meetings of the Executive Committee and 85 per cent of the meetings of the Board of Directors? A. That is correct.

Q. Mr. Wishon is also an officer who, while not a member of the Board of Directors, is by resolution invited to attend the meetings of the Executive Committee, is that right? [312]

A. That is correct, yes.

The Examiner: According to the legend at the bottom of the page you have accounted for all of the persons attending the meetings of the Executive Committee as either members of that committee or having been invited there by resolution except Mr. McIntosh.

The Witness: Well, Mr. McTosh was a member of the committee.

The Examiner: I see.

The Witness: At certain times when he took Mr. Anderson's place he was also a member of the —made a member of the Executive Committee and attended meetings as a member.

(Testimony of David Hiram Foote.)

The Examiner: I see.

The Witness: But since his last election as a director he has not been a member of the Executive Committee.

The Examiner: All right. Thank you.

Mr. Phleger: If the Examiner pleases, the list shows all of the present directors and their attendance at meetings of the Board of Directors and of the Executive Committee. Mr. McIntosh, although presently a director, is not now a member of the Executive Committee and, therefore, his attendance at meetings of the Executive Committee is for the period that he served as such a member.

The Examiner: I see.

Mr. Phleger: Exhibit 17 shows those periods.

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The Examiner: 16 shows as a director and 17 as a member of the Executive Committee.

Mr. Phleger: Yes. You will note that that membership in which he substituted for Mr. Anderson as a member of the Executive Committee ceased on the death of Mr. Anderson and Mr. Anderson's position was not thereafter filled.

The Examiner: Yes.

Mr. Phleger: I offer as Applicant's Exhibit 26 a statement prepared at the request of counsel for the Securities and Exchange Commission——

Mr. Gerdes (interposing): No.

Miss Calkin: I don't believe I asked for this.

(Testimony of David Hiram Foote.)

Mr. Phleger: Strike that out, please.

I offer as Applicant's Exhibit 26 a statement entitled "Pacific Gas and Electric Company stockholders' meetings".

The Examiner: This schedule or document consisting of two pages, if there is no objection, will be received in evidence and marked Applicant's Exhibit 26.

(The two-page document referred to above was marked Applicant's Exhibit No. 26 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, this exhibit was prepared under your direction and is true and correct, is it?

A. Yes, sir. [314]

Q. It shows the date, does it not, of each stockholders meeting, the number of shares present in person or by proxy, the percentage of outstanding stock so represented, the names of the persons holding the proxies and the number of notices sent to the stockholders? A. That is correct.

Q. I direct your attention to the fact that there is some variation in the percentage of stock represented at various stockholders meetings. Is it true that the attendance at the stockholders meetings is increased by sending out more than one notice?

A. Yes sir.

Q. Let me direct your attention to the two meetings held in 1926, the April meeting in that year had 68 per cent of the stock represented. The

(Testimony of David Hiram Foote.)

meeting held in October of that year had 73 per cent of the stock represented.

Was the larger attendance at the second meeting due to sending out an additional notice?

A. I think so; undoubtedly so.

Q. Now, I call your attention to the fact that a similar situation appears with respect to the 1927 and the February 1928 meetings.

A. It does.

Q. There were but 64 per cent present at the 1927 meeting and 75.5 per cent present at the February 1928 meeting. [315]

What caused the additional attendance in the February 1928 meeting?

A. The additional notice, the additional requests that were sent out, the second requests or proxies.

Q. Do you know why a greater attendance was desired at the 1928 meeting?

A. Yes; there were certain amendments, I think, to our articles of incorporation at which it was required that at least two-thirds should vote and the first notice didn't bring in that required percentage so we adjourned the meeting and sent out another notice.

Q. And has it been the uniform practice of the company wherever a specified number of shares were required for corporate purposes to send out additional notices if the first meeting was not attended by the requisite number?

A. Yes, that is a fact.

(Testimony of David Hiram Foote.)

Q. Now, I direct your attention to the meeting held on April 14, 1931, at which 70 per cent of the stock was represented. Had you sent out additional notices there?

A. Yes. We sent additional notices to stockholders holding large—a thousand shares or over.

Q. Now, the 77.5 per cent attendance on June 2, 1931 was the result similarly of sending out notices?

A. Yes.

Q. Do you recall whether or not some particular [316] percentage was required? A. I do.

Q. At that meeting?

A. I do. At that meeting there was some corporate action required that required at least two-thirds of each class of stock, and while we had proxies for over two-thirds of the total amount we had to send out additional requests because we didn't have the required percentages in each class so that raised the percentage to 77 per cent in order to get that.

Q. Yes. Now, I direct your attention to the column headed "Persons holding proxies". The persons named there were the persons named on the printed forms which were sent out to the stockholders with the notice of meetings, were they not?

A. Yes, they were.

Q. It is the custom of the company, is it, to send out requests for proxies?

A. It has always been the custom.

Q. And those proxies have printed in them the names of certain of the company's officers?

(Testimony of David Hiram Foote.)

A. Always, yes sir.

Q. That runs back how many years?

A. Oh, ever since the company was formed.

Q. That has been a practice for 35 years? [317]

A. Yes sir.

Q. It has been a uniform practice?

A. Uniform practice, yes sir.

Q. I call your attention to the fact that in 1925 the names in the proxies were W. E. Creed, F. J. Leach, Jr., and A. F. Hockenbeamer. What positions did those men hold with the company at that time?

A. Mr. Creed was president, Frank Leach was vice-president and general manager, and Mr. Hockenbeamer was treasurer, vice-president and treasurer.

Q. Now, those individuals continued, or rather, officers continued to be the persons named as proxies until the February 13, 1928 meeting?

A. Yes sir.

Q. At which time Mr. Hockenbeamer, Mr. Leach and yourself were named as proxies?

A. Yes sir.

Q. What positions did those individuals hold at that time?

A. Well, Mr. Hockenbeamer was president; Mr. Leach was still vice-president and general manager, and I had been made treasurer.

Q. You had succeeded Mr. Hockenbeamer as treasurer? A. Yes sir.

(Testimony of David Hiram Foote.)

Q. And was it by virtue of your position as treasurer [318] that you were named to that proxy?

A. Never exactly so stated, but the president fixed those names and they were printed that way.

Q. That has been the custom?

A. That has been the custom, yes.

Q. And there was no change, then, in the persons named as proxies until the meeting of April 14, 1936, was there?

A. Well, yes, there was. At a meeting of April 1930 there was a change; Mr. Downing took Mr. Leach's place.

Q. Oh. You are correct. When Mr. Downing succeeded Mr. Leach as vice-president and general manager he took Mr. Leach's place on the proxy?

A. Yes, that is right.

Q. Now, the next change came in 1936 when Mr. Black took Mr. Hockenbeamer's place?

A. Yes, that is right.

Q. That was by virtue of his being president?

A. That is right.

Q. And that is the situation which obtains up to the present time, is it not? A. Yes sir.

Q. Now, during all of this entire period and during all of your knowledge of company affairs, is it not a fact that the persons who at the time occupied the position of [319] president, vice-president and general manager and treasurer, were named in the proxy?

(Testimony of David Hiram Foote.)

A. Yes. Prior to this time there was one meeting at which I was named only as a representative, as secretary.

Q. That was only at one meeting?

A. That was only at one meeting. I have forgotten what meeting it was, many years ago when I was first elected as secretary. Mr. Drum, who was president at the time, said to send the proxies out that way and they were sent out that way.

Q. But with the exception of that time the persons names in the proxies sent out by the company have always been those who occupied the respective offices of president, vice-president and general manager, and treasurer? A. Yes.

The Examiner: The names of these persons thus appearing on the solicitation for proxies are those constituting what has been referred to here as the Proxy Committee?

The Witness: Proxy Committee. I wouldn't exactly call that a committee——

The Examiner (interposing): I am not sure that you used that term. The term was used. I was wondering if you knew.

The Witness: No, we don't—we just call them proxies.

The Examiner: All right. We will have a noon recess [320] at this time until 2 o'clock.

(Whereupon at 12:10 p.m. a recess was taken until 2:00 o'clock p.m. of the same day.) [321]

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p. m.)

The Examiner: We will resume whenever you are ready, Mr. Phleger.

DAVID HIRAM FOOTE

was produced as a witness for and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Direct Examination

(Resumed)

Mr. Phleger: I will offer in evidence, as Applicant's Exhibit No. 27, the By-Laws of the Pacific Gas and Electric Company.

This is also produced at the request of the counsel for the Securities and Exchange Commission.

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 27.

(The By-Laws above referred to were marked Applicant's Exhibit No. 27 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, is this Exhibit a full, true and correct copy of the by-laws of the Pacific Gas and Electric Company?

A. I presume it is. I haven't read it word for word, but I would say it was without question.

I notice one amendment here that I know about that is [322] in the by-laws.

(Testimony of David Hiram Foote.)

Q. What is that?

A. That is in Article IV, where the Executive Committee was changed from 4 to 5 directors, and it has a printed 5 there and I remember that being in the present code.

I don't think there is any doubt but what this is a full, true and correct copy of the by-laws.

Mr. Phleger: Article I, Section 2 of these by-laws reads as follows:

"At the annual meeting of the stockholders, members of the Board of Directors for the ensuing year shall be elected by ballot in the manner prescribed in Section three hundred and seven (307) of the Civil Code of the State of California, as it exists on January 2, 1906, to serve for one year and until the election of their successors."

I now offer in evidence, as Applicant's Exhibit 28, a copy of Section 307 of the Civil Code of the State of California as it existed on January 2, 1906.

I take it, Miss Calkin, you will agree to that, subject to verification?

Miss Calkin: I have no objection.

Mr. Phleger: This is a copy of the statute as it existed at that time.

Miss Calkin: Yes.

The Examiner: It will be received in evidence and marked [323] Applicant's Exhibit No. 28.

(The Civil Code above referred to was marked Applicant's Exhibit No. 28 and received in evidence.)

(Testimony of David Hiram Foote.)

The Examiner: I notice the memorandum also includes a typewritten copy of that Section of the by-laws that you have just read.

Mr. Phleger: Yes; which is now in evidence.

The Examiner: That is already in evidence. You only really intend to offer the first page?

Mr. Phleger: I intend to offer the two to show the relationship and show why it was introduced. I will direct the Examiner's attention to the fact that this Section provides for cumulative voting.

By Mr. Phleger:

Q. Mr. Foote, does the preferred and common stock, or do the preferred and common shares of stock of the company have voting powers?

A. Yes, they do.

Q. On what basis? A. Equal basis.

Q. That is one——

A. (interposing) One vote for each share.

Q. One vote of the preferred stock—one share of preferred stock has a vote?

A. The same as the common, yes, one vote each.

[324]

Q. That is the way in which the shares of preferred and common stock have been represented and voted in the past? A. Always that way.

Q. And at the present time?

A. Yes. The old shares of $100 par value have now 4 votes because they are the equivalent of four $25 shares.

Q. That change took place many years ago?

(Testimony of David Hiram Foote.)

A. Yes, that change of the par value.

Mr. Bosley: In 1926, I think it was.

The Witness: In 1926, was it?

Mr. Bosley: In the month of December, 1926.

Mr. Phleger: Yes. For the benefit of the record I will state that in the exhibit, consisting of the original articles of incorporation, the amendment of December 31, 1926, reduced the par value of all shares of outstanding stock to $25 per share, both for the preferred and for the common stock.

By Mr. Phleger:

Q. It is a fact, Mr. Foote, that since that date, December 31, 1926, that each share of stock of $25 par value has had one vote?

A. One vote for each share. There are quite a number of certificates outstanding of the $100 par value stock, but that has the equivalent of four shares.

Q. That is, people have simply neglected to bring in their old certificates? [325] A. Yes.

Q. But when those shares are voted they are voted on a $25 par value basis?

A. That is the idea.

Mr. Phleger: I offer in evidence, as Applicant's Exhibit No. 29, a statement entitled "Pacific Gas and Electric Company Stockholders Located in Company Divisions as of August 1, 1940."

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 29.

(Testimony of David Hiram Foote.)

(The statement above referred to was marked Applicant's Exhibit No. 29 and received in evidence.)

Miss Calkin: I would like to ask Mr. Phleger whether Section 307 of the Civil Code of the State of California is still the law of the State.

Mr. Phleger: Section 307 has been amended and is not in its present form, but has been in substance enacted into another Section; but cumulative voting does exist in California at the present time.

Miss Calkin: That is applicable to all corporations?

Mr. Phleger: Applicable to all corporations, unless the articles or by-laws otherwise specifically provide. In fact, I would like to verify that. It applies cumulative voting to all California corporations. It does not apply to foreign corporations qualified to do business in this State if their articles or by-laws otherwise provide.

The Examiner: Does it also provide that the California [326] corporations may provide otherwise by its articles?

Mr. Phleger: It may, since the amendments of 1932—is it?

The Examiner: 1933.

Mr. Phleger: Yes, 1933—but certainly as to this corporation there is no doubt that the requirement of cumulative, or the privilege of cumulative voting applies. Is that not so, Mr. Bosley?

(Testimony of David Hiram Foote.)

Mr. Bosley: That is correct. In the 1931 session of the State Legislature a new general corporation law was adopted by the Legislature which superseded the general corporation law embodied in the Civil Code. This was given Civil Code numbers. It follows in the main the older provision, but made many changes. Prior to that time all corporation stock was required to have equal voting rights, and there was a provision for cumulative voting at elections of directors.

The 1931 statute, among other things, authorized a classification of shares and the making of provision for giving some shares only restricted or qualified voting rights; although there is a provision in there that for certain purposes all stock, whether it has the rights of voting generally at shareholders' meetings, must be allowed to vote. That deals with the question of disposing of all of the corporate assets, making amendments, and certain other fundamental proceedings.

But the present law does provide that the shares shall [327] have equal voting rights, one vote for each share of all the stock that has voting power, and it does provide for the cumulative voting at election of directors.

The articles of incorporation of this company have been introduced in evidence. Its by-laws are now offered in evidence. There is nothing in the articles or in the by-laws to in any way limit or qualify or restrict the right of stockholders to vote at

(Testimony of David Hiram Foote.)

all shareholders' meetings, one vote for each share, and at the election of directors they may cumulate votes, that is, each shareholder will have as many votes as he has shares of stock multiplied by the number of directors to be elected. If there are 15 directors to be elected, and a man who has 100 shares he would have 1500 votes and he can cast them all for one candidate or split it up among the entire 15, or among any number in between there.

Mr. Phleger: I offer in evidence, as Applicant's Exhibit No. 30, a statement headed "Pacific Gas and Electric Company Summary Showing the Holdings of North American Company and its Subsidiaries for June 1930 to July 1940."

The Examiner: In the absence of objection the schedule will be received in evidence and marked Applicant's Exhibit No. 30.

(The statement above referred to was marked Applicant's Exhibit No. 30 and was received in evidence.) [328]

Mr. Phleger: Before I proceed with No. 30 I will ask the witness some questions about Exhibit No. 29.

By Mr. Phleger:

Q. Mr. Foote, Exhibit 29 was prepared under your direction and is true and correct, is it?

A. Yes, it is.

Q. It shows the holdings of stock by divisions. Those divisions are the divisions shown in Applicant's Exhibit No. 10.

(Testimony of David Hiram Foote.)

A. Yes. The different operating divisions of the company.

Q. I show you Exhibit 10. A. Yes.

Q. I direct your attention to the fact that that exhibit shows the percentage of preferred and common stock held by residents of California. It shows, does it not, that 71.5 percent of the preferred stock of the company is owned by residents of California?

A. Yes.

Q. And that only 28.5 percent of the preferred stock is held by persons not residents in California?

A. That is right.

Q. And it shows, does it not, that 27.6 percent of the common shares are held in California and 72.4 percent are held by non-residents of California? [329] A. Yes, sir.

Q. And it shows further, does it not, that of the total shares outstanding 47.9 percent are held by residents of California and 52.1 percent are held by non-residents? A. That is right.

The Examiner: Mr. Foote, these figures, I presume, were taken from the stock record books of the company?

The Witness: Yes.

The Examiner: These computations are based upon those figures?

The Witness: Yes; that is right.

By Mr. Phleger:

Q. I call your attention, Mr. Foote, to Applicant's Exhibit No. 26, showing the data of attend-

(Testimony of David Hiram Foote.)

ance at stockholders' meetings from 1925 to date.

A. Yes.

Q. On that Exhibit it is shown that at the meeting on April 14, 1931 there was an attendance of 70 percent, is that correct?

A. That is right; yes.

Q. An adjourned meeting was held on June 2 of the same year, a second notice having been sent out between the first meeting and the second meeting, is that correct? A. That is right.

Q. At the second meeting there was present 79 percent [330] of the common shares? A. Yes.

Q. 77 percent of the 6 percent First Preferred?

A. Yes.

Q. And 68 percent of the 5½ Percent Preferred? A. Yes.

Q. Now, from that data can you state whether the additional attendance at the second meeting, which resulted from the second notice, was made up largely of preferred stockholders?

A. Yes, I think it was. As I recollect it was made up of stockholders who had exchanged their subsidiary company stock for preferred stock of the Pacific Gas and Electric Company.

Q. Now, from your experience in connection with stockholders' meetings, and the sending out of notices, is it your belief that it would be possible at any time, by sending out an additional notice, to obtain an attendance at stockholders' meetings of approximately 75 percent?

(Testimony of David Hiram Foote.)

A. Yes, I think so, without question.

Q. In your opinion there would be no difficulty in doing it? A. I think not.

Q. Has the company ever, in the last ten years, solicited proxies for attendance at stockholders' meetings, other [331] than by the ordinary notice through the mails? A. No.

Q. And it has never sent out more than two notices for any meeting? A. I think not.

Q. And it has never sent out any more than one notice for a meeting except as indicated on Exhibit 26?

A. That is right; I believe that is right.

Q. I now call your attention to Exhibit 30, showing the holding of North American and its known subsidiaries from 1930 to 1940. Was it prepared under your direction and is it true and correct?

A. Yes, it was and it is.

Q. I call your attention to the fact that the known subsidiaries of North American, as shown on the Exhibit, include Western Power Corporation, Noxid & Company, and Nunn & Company. Those are all of the subsidiaries and affiliated corporations you know of, are they not?

A. Yes, sir.

Q. The number of shares held by directors include shares held by nominees of that company?

A. Yes, sir; that is right.

Q. And the shares held from 1935 on are the shares held by Mr. Freeman and Mr. Fogarty, are they not? A. Yes, they are. [332]

(Testimony of David Hiram Foote.)

Q. Now, if you will turn to the total number of shares outstanding, as shown on this list, you will note that between May 31, 1930, when 7,325,268 were outstanding, and November 12, 1930, there was a substantial increase in the number of outstanding shares. Do you know what brought about that increase?

A. I think several reasons. We offered stock rights, common stock rights, and then there were exchanges of preferred stock for stock of underlying companies, I think. Isn't that right? No, I guess there were no common stock rights offered after 1930. Well, there must have been because——

Mr. Phleger (interposing): Off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record.

By Mr. Phleger:

Q. Is it not a fact, Mr. Foote, that during that period the increase in the number of common shares outstanding resulted from an offer of common stocks to the existing stockholders?

A. Yes, that is right.

Mr. Bosley: Off the record for a moment.

The Examiner: Just a moment. That period that you referred to, Mr. Phleger, is between May 31, 1930 to June 12, 1930? [333]

Mr. Phleger: Yes.

Mr. Bosley: Off the record.

(Testimony of David Hiram Foote.)

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record.

By Mr. Phleger:

Q. Mr. Foote, the maximum percent of the total voting stock of the Pacific Gas and Electric Company held by the North American Company and its subsidiaries and nominees was 19.89 percent on May 31, 1930, was it not? A. Yes.

The Examiner: June 12, 1930, isn't it?

Mr. Phleger: Yes. June 12, 1930. That is correct.

The Witness: Yes.

By Mr. Phleger:

Q. And from that date down there has been a constant but slight decline in the percentage of voting stock held, is that not so?

A. That is true.

Q. So that as of July 31, 1940 the percentage of voting stock had declined from the maximum of 19.89 percent on June 12, 1930 to the present percentage of 17.71 percent?

A. Yes; that is right.

Mr. Phleger: I offer in evidence, as Applicant's Exhibit No. 31, a statement headed "Pacific Gas and Electric Company [334] Summary Showing Percentage of Each Class of Stock Represented at the Annual Meeting of Stockholders on April 9, 1940."

(Testimony of David Hiram Foote.)

The Examiner: It will be received and marked Applicant's Exhibit No. 31.

(The statement above referred to was marked Applicant's Exhibit No. 31 and received in evidence.)

By Mr.Phleger:

Q. Was Applicant's Exhibit 31 prepared under your direction and is it true and correct?

A. It was and it is.

Q. That shows, does it not, that at the stockholders' meeting on April 9, 1940, that there was a smaller representation of the preferred stock than there was of the common stock?

A. Yes, that is true.

Q. That is to say, that at that meeting 51.92 percent of the First Preferred stock 6 percent was represented and 53.59 percent of the First Preferred 5-½ percent stock was represented?

A. That is right.

Q. Whereas 71.50 percent of the common stock was represented? A. That is right.

Q. In your opinion, based upon your experience at stockholders' meetings over many years, would it be difficult [335] to obtain a substantially larger representation of preferred stockholders by sending out additional notices?

A. I think it would not be; I think it could be done very readily.

Mr. Phleger: I offer, as Applicant's Exhibit No. 32, a statement headed "Pacific Gas and Electric

(Testimony of David Hiram Foote.)

Company Table Showing Pacific Gas and Electric Company Stocks Owned by Directors and Their Families, and With Others with Whom Directors are Affiiliated, as of October 1, 1940."

By Mr. Phleger:

Q. Mr. Foote, was that Exhibit prepared under your direction? A. It was; yes.

Q. And it is true and correct?

A. I believe so; yes, sir.

Q. That is to say, all you are testifying to is that the name of the individuals shown as owning stock is correct as shown by the stock records?

A. That is right.

Q. You are not testifying as to whether or not the directors are, in fact, affiliated with the other interests shown on the statement?

A. That is right.

The Examiner: This schedule, consisting of five typewritten pages, will be received in evidence, in the absence [336] of objection and marked Applicant's Exhibit No. 32.

(The statement, consisting of five pages, above referred to was marked Applicant's Exhibit No. 32 and received in evidence.)

Mr. Phleger: I now offer, as Applicant's Exhibit No. 33, a bound volume marked on the cover "Reports Furnished Regularly to Directors of the Pacific Gas and Electric Company Who Are Officers of the North American Company."

(Testimony of David Hiram Foote.)

This was supplied in response to the request of counsel for the Securities and Exchange Commission.

The Examiner: This volume, consisting of a number of sheets, schedules, and reports, with a label on it as read by Mr. Phleger, will be received in evidence, without objection, as Applicant's Exhibit No. 33.

(The volume of schedules and reports above referred to was marked Applicant's Exhibit No. 33 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, will you examine Exhibit No. 33 and state which of those documents, which it contains, are forwarded by you periodically to Mr. Fogarty, of the North American Company, who is a director of the Pacific Gas and Electric Company?

A. Well, this Cash Report, that is forwarded to him. That is included in the President's Report.

Q. The item marked "Cash Report, August 19, 1940" [337] I understand you to state——

A. (Interposing) Is included in the President's Report to the Executive Committee, and that Report is sent to Mr. Fogarty by me.

Q. If I understand it, it is a typical example of the type of Cash Report which is submitted by the President at each meeting of the Executive Committee? A. That is exactly right.

Q. And you, after the Executive Committee meeting, send a copy of it to Mr. Fogarty?

(Testimony of David Hiram Foote.)

A. I do; that is right.

Q. Now, the next document headed "Pacific Gas and Electric Company Expenditures Authorized Under G. M. Estimates for the Period from August 14 to August 20, 1940", is that a typical form of——

A. (Interposing) That is a typical form of the report submitted by the Vice-President and General Manager to the Executive Committee each week. They go over it item by item and approve it by resolution. I send a copy of that to Mr. Fogarty.

Q. You send a copy of this particular typical report to Mr. Fogarty after the Executive Committee meeting at which it has been first presented by the General Manager? A. Yes; and approved.

Q. Now, the next report headed "Pacific Gas and [338] Electric Company System Generating Report Progressive and Comparative by Week and 52-Week Periods", is a report——

A. (Interposing) That is submitted to the Executive Committee by the Vice-President and General Manager, and he reads off the salient features of it.

This is also sent to Mr. Fogarty after the meeting.

Q. You send this to Mr. Fogarty after the meeting?

A. Yes.

The same may be said of the System Precipitation Data, Precipitation and Snow Coverage, and

(Testimony of David Hiram Foote.)

that is also read by Mr. Downing to the Executive Committee, the salient features of it, and afterwards a copy of that is sent to Mr. Fogarty after the meeting.

This (indicating) is the natural gas, the output of the natural gas, and that is also submitted in the same way by the General Manager to the Executive Committee and, after each meeting, a copy of that is also sent to Mr. Fogarty.

Q. By you? A. By me.

This (indicating) is a list of new business connected during the week ending at the time of the meeting and compared with the same relative week a year ago. That is also submitted to the Executive Committee by Mr. Downing and a copy of that is sent to Mr. Fogarty after the meeting.

This (indicating) is a typical form of——

Q. (Interposing) The next statement headed "Executive [339] Committee Meeting—August 20, 1940," what is that?

A. That is a typical copy of the minutes. That is the copy of the minutes of that date, and it is typical of all of the minutes of the Committee.

That is also sent to Mr. Fogarty.

Q. You write up those minutes, do you not?

A. I do.

Q. And after you have written them up you send a copy to Mr. Fogarty?

A. Yes.

This (indicating) is a "Customer Statement" that

(Testimony of David Hiram Foote.)

is submitted periodically by Mr. Black in his report, weekly report to the Executive Committee, and that is also forwarded as a part of Mr. Black's report.

Q. Do you forward that to Mr. Fogarty?

A. Yes, I do.

This (indicating) is a "Customer Statement" that is also included in Mr. Black's report periodically and it goes forward to Mr. Fogarty.

Q. You forward it to Mr. Fogarty after the meeting?

A. After the meeting; yes.

This (indicating) is a statement that is included in Mr. Black's weekly statement to the Executive Committee. It is a statement of completed G. M. estimates showing the amounts expended on each, and the amounts estimated, and the Committee [340] then passes a resolution cancelling the amounts estimated which have not been expended in completing these jobs, and approving amounts expended in completing the jobs which exceed the estimates as originally approved by the Committee.

That is also forwarded to Mr. Fogarty after the meeting.

Q. That statement that you have referred to is headed "Pacific Gas and Electric Company Statement of Capital Expenditures for Executive Committee"? A. That is right.

The Examiner: That is followed by 22 numbered pages, all constituting the same report?

Mr. Phleger: That is correct.

(Testimony of David Hiram Foote.)

By Mr. Phleger:

Q. This next sheet entitled "Consolidated Income Statements", what is that?

A. That is submitted by Mr. Black to the Executive Committee periodically, but I do not forward copies of this to Mr. Fogarty.

The Examiner: This is the consolidated income statement?

The Witness: Yes.

The following sheets are not sent to Mr. Fogarty by me.

By Mr. Phleger:

Q. There are six?

A. They are also submitted to the Board of Directors by Mr. Black. [341]

Q. The six following sheets are headed respectively, "Pacific Gas and Electric Company and Subsidiary Companies, Operating Revenue and Expenses by Departments and Consolidation, Month of June 1940 Compared With 1939".

"Electric Department. Gross Operating Revenue Month of June 1940 Compared With Previous Year."

"Gas Department. Gross Operating Revenue Month of June 1940 Compared with Previous Year."

"Electric Department. Operating Expenses Month of June 1940 Compared With Previous Year."

"Gas Department. Operating Expenses Month of June 1940 Compared With Previous Year."

(Testimony of David Hiram Foote.)

"Electric Department. Number of Customers Month of June 1940 Compared With Previous Year."

"Gas Department. Number of Customers Month of June 1940 Compared With Previous Year."

And a sheet headed "Railway Department. Gross Operating Revenue and Expenses Month of June 1940 Compared With Previous Year."

The same as to the Water Department.

The same as to the Steam Department.

And "Statement of Purchased, Consigned and Interchange Power, Month of June 1940 and 1939."

"Statement of Natural Gas and Butane Liquid Purchased, Month of June 1940 and 1939." [342]

And then a "Summary".

Are all of those statements, which I have just read, submitted by Mr. Black, President of the company, to the directors' meetings?

A. Both the Executive Committee and the directors' meetings; yes, sir.

Q. And you do not forward them to Mr. Fogarty?

A. No, I do not forward those.

Q. The next statement is headed, "Pacific Gas and Electric Company and Subsidiary Companies, Balance Sheets and Income Statements, June 1940."

A. Yes. That is submitted by Mr. Black to the Executive Committee, and also to the Board of Directors just as soon as it is issued each month.

Q. Do you send that to Mr. Fogarty?

A. I do not send that to Mr. Fogarty.

(Testimony of David Hiram Foote.)

Q. The next statement is a copy headed "Regular Board Meeting—May 22, 1940". What is that?

A. That is a copy of the minutes of that meeting, of the meeting held on that date by the Board of Directors, and typical of the minutes kept for the Board, and copies of those minutes are forwarded by me to Mr. Fogarty each time we have a meeting, that is, within a few days afterwards.

Q. The statement headed "1940 E.E.I. Monthly Report [343] Form", do you know anything about that?

A. No, I do not. That is gotten up by the Edison Electric Institute.

Q. Now, Mr. Foote, with respect to all——

The Examiner: You don't know what this report is?

The Witness: No. That is not submitted to the Executive Committee.

The Examiner: Or to Mr. Fogarty?

The Witness: No.

Mr. Phleger: We will connect that up by another witness, these other documents.

The Examiner: All right.

By Mr. Phleger:

Q. Mr. Foote, with respect to all of the reports, minutes and other documents which you have testified that you send to Mr. Fogarty, is it a correct statement to say that none of those reports are forwarded until after the meetings at which they are presented to the Executive Committee or the Board of Directors?

(Testimony of David Hiram Foote.)

A. Yes; that is a correct statement. They are not sent until after those meetings have been adjourned.

Q. And each of them, or the contents of each of them have first been communicated to the members of the respective bodies?

A. That is right; yes. [344]

Q. Do you send copies of the same documents to Mr. Freeman?

A. No, I do not. I send copies to Mr. Fogarty, and a copy of my letter to Mr. Fogarty describing the enclosures is sent to Mr. Freeman under separate letterhead.

Q. For what purpose do you send that to Mr. Freeman?

A. Simply because he is a director of the company.

Q. Is it for the purpose of acquainting him with the fact that they are available to him through Mr. Fogarty? A. That is the idea.

Q. Mr. Foote, during the period that you have served as a director of the company have you ever hesitated to freely express your views on company matters? A. I have not.

Q. During that period has any one person at any time dominated the deliberations of either the Board of Directors or the Executive Committee?

A. No, sir.

Q. During that entire period have you ever heard it stated that the North American Company

(Testimony of David Hiram Foote.)

either favored or opposed any measure pending before the Board?

A. No, I never have.

Q. As a matter of fact, with the exception of the transaction in 1930, when the company purchased securities from the North American Company, and of the recent time when [345] this particular proceeding was discussed, have you ever heard the name of the North American Company mentioned in the directors' meetings?

A. I don't believe I ever have. I don't remember it and I think I would remember it if it had been mentioned.

Q. When did you first meet Mr. James B. Black, present President of the company?

A. I think about 1930.

Q. 1930?

A. I think so. When we took over those companies I think I was not acquainted with him before; if so, very casually.

Q. During the period from 1930, when you first became acquainted with Mr. Black until he became President in 1935, did you ever discuss with him company affairs? A. I think not; no.

Q. Have you any present recollection of ever having talked with him during that period?

A. Our conversations were very casual and I think we never had any talk about company affairs.

Q. Has anyone purporting to act for the North American ever requested you to take any action or

(Testimony of David Hiram Foote.)

to refrain from any action as an officer or director of the Pacific Gas and Electric Company?

A. No, sir. [346]

Q. Have you ever at any time or in any connection observed anything which would indicate to your mind that the Pacific Gas and Electric Company is controlled directly or indirectly by the North American, or that the management or policies of the Pacific Gas and Electric Company are subject to a controlling influence, directly or indirectly, by the North American Company?

A. No, I don't think so; absolutely not. They have always been controlled from the very beginning of the company by the western contingent.

Q. You mean the people who live and resided in California?

A. Yes; in San Francisco and California.

Q. Have any meetings of the Board of Directors, or of the Executive Committee of the company, ever been held outside of San Francisco? A. None.

Q. Do you remember the occasion in 1935 when the Public Utility Act of 1935 was under consideration by Congress? A. Yes.

Q. Did the P. G. & E. ever communicate with its stockholders requesting or advising them with respect to the tendency of that measure and asking that they oppose it?

A. No; no communication was sent.

Q. Has the P. G. & E. ever taken any position in [347] opposition to that measure?

(Testimony of David Hiram Foote.)

A. I think not.

Q. You have never communicated with your stockholders on it? A. Never have.

Q. Has the company ever loaned any money to the North American Company? A. No.

Q. Has it ever borrowed any money from the North American Company? A. No; none.

Mr. Phleger: I think that is all.

The Examiner: Any cross examination, Miss Calkin?

Miss Calkin: Yes.

The Examiner: We can take a recess if you wish, first.

Miss Calkin: I suggest a short recess.

(Whereupon, a short recess was taken after which proceedings were resumed as follows:)

[348]

The Examiner: You may resume the hearing.

Have you any further direct examination?

Mr. Phleger: Yes. I would like to clear up a question which was asked by the Examiner with respect to Exhibit 21, that was whether or not there were any duplications as between the various classes of stock in estimating the total number of stockholders.

The Examiner: I think your explanation subject to verification cleared up the point I had. I didn't mean there was any duplication in the sense that they had more numbers than were legitimate. My thought was that if a single individual owned

(Testimony of David Hiram Foote.)

several classes of stock he would be counted as an owner of that class and therein might be duplicating as to the total number.

Mr. Phleger: That was as I understood your comment, and Mr. Foote has the actual amount of duplication. I thought it might be of some interest.

The Examiner: Oh, yes.

By Mr. Phleger:

Q. Mr. Foote, to what extent are there duplications of the kind mentioned by the Examiner?

A. In order to get a very exact record of those it would involve an amount of work we didn't have time to attend to.

The Examiner: I don't think it is sufficiently [349] material to be important.

The Witness: I tell you I have taken the matter up since leaving here this morning and the best estimate we can make is that there are about 17,100 duplications, but in the list of our stockholders we have about the same number of joint tenancies which are composed of at least two stockholders, each one, so that we thought that that one would offset the other. You see the idea?

Mr. Phleger: Yes.

The Witness: The number of stockholders would be about the same, the difference being that joint tenancies of two or more would make up the duplications just about the same amount, as near as we can estimate.

Mr. Phleger: That is all.

(Testimony of David Hiram Foote.)

Cross Examination

By Miss Calkin:

Q. Mr. Foote, on your direct examination you testified that the first common stock of the company was all retired by it due to the non-payment of the assessments that were made against that common stock. After it had become treasury stock what was done with that common stock? Was it reissued by the company?

A. It was reissued in various ways. Some of it was sold; a larger number of shares were issued to the holders of preferred stock in consideration of their releasing the [350] company of their claim for dividends on preferred stock that had not been paid. There were about three—a little over three years, as I recollect, after the fire the company had difficulties and didn't pay the dividend on its preferred stock, and along about 3½ years after the fire the Board of Directors offered the owners of preferred stock common stock in lieu of their dividends; that is to say, they offered it provided the preferred stockholders would release their rights to the dividends, and that was all taken up.

Q. Well, in the early days of the company was a considerable amount of its common stock issued as bonuses in connection with financings?

A. In connection with what?

Q. In connection with financing of the company?

A. Well, yes, quite a little of it. It was issued in

(Testimony of David Hiram Foote.)

connection—the company, after the fire, incurred an indebtedness of some—well, some eleven million dollars owed to various—for material and supplies, a large part of it for machinery, the General Electric Company and Westinghouse, all those people.

Well, Mr. Hockenbeamer and I went around to see those people and we settled many of those bills by delivering bonds of the California Gas & Electric Corporation and with those bonds we gave—offered shares of stock of the Pacific Gas and Electric Company common stock. [351]

Mr. Phleger: That was all prior to 1910, was it not?

The Witness: Oh, yes; oh, yes.

Mr. Phleger: And this fire you referred to took place in 1906?

The Witness: 1906. That all occurred about—let me see—1907, about 1908.

Mr. Phleger: May I interrupt.

The shares of stock that you now referred to were shares which had previously been issued?

The Witness: Yes.

Mr. Phleger: And had been bought back by the company through failure to pay the assessment?

The Witness: That is right.

By Miss Calkin:

Q. Do you know whether or not there was at that time or now is a provision in the California law to the effect that a company must receive the par value of securities for stock?

(Testimony of David Hiram Foote.)

A. I think there was no law at that time to that effect; I am quite sure there was not.

Q. You testified, I believe, that no copies of any minutes of the applicant were kept outside of the office of the applicant until recently. Did you have reference then to the copies of the minutes which are now maintained in the offices of North American Company? [352]

A. Well, no, they are not signed minutes. They are only carbon copies and they are not signed.

Mr. Phleger: Excuse me. I didn't understand him to so testify.

Miss Calkin: I believe that is what he said.

By Miss Calkin:

Q. Did you not say that you——

A. (interposing) What I meant to testify was that none of the records, none of the stock records or the minutes of the Pacific Gas and Electric Company were ever outside of the State of California.

Q. Well, I thought you said until recently.

A. Oh, no.

Q. That is the matter I wanted cleared up.

A. No, I didn't mean that, because I don't consider that those are exactly records. They are just simply copies on sheets of paper sent for their information.

Q. You consider the minutes kept by the North American Company in New York as a duplicate set of the minute books of your company?

A. No, absolutely not; I never signed them.

(Testimony of David Hiram Foote.)

Mr. Phleger: Well, Miss Calkin, he didn't testify that he sent them to the North American. He sends them to the directors of the Pacific Gas and Electric, the individuals who are directors of North American Company; isn't that [353] correct?

The Witness: That is right. That is exactly right.

The Examiner: I think that is the testimony with respect to who got the copies, but I think that Miss Calkin's recollection is the same as mine with respect that he did testify that until recently there were no records of the company elsewhere, and I suppose that is what he meant.

The Witness: There were no copies; I might say there were no copies then.

Mr. Phleger: My recollection may be at fault.

Miss Calkin: It is in yesterday's testimony. I don't have the time to check it.

The Witness: There were no copies of the minutes outside of California—we will say that—because they are not duplicate minutes. They are not signed by me as secretary. I don't sign them when I send them out.

Mr. Bosley: I suppose further you don't know what those New York directors do with those copies after they get them, do you?

The Witness: I have no idea.

The Examiner: You don't send copies to anyone other than these New York directors?

(Testimony of David Hiram Foote.)

The Witness: No, no, because the others are all in California and usually attend the meetings. We very often have a full Board with the exception of the two directors, [354] two New York directors.

By Miss Calkin:

Q. Do any officers of the North American Company or any of its representatives have any authority to check on the Applicant's bank accounts located in the City of New York? A. No, no.

Q. Who does have authority to check on those accounts?

A. On the—pardon me—will you repeat that question? Do any officers——

The Examiner: Read that question, please?

(The question referred to was read by the reporter as above recorded.)

The Witness: That is exactly right. I said "no" they do not.

The Examiner: By "checking", do you mean verifying and checking as to accuracy or the amount thereof or drawing checks?

Miss Calkin: I mean drawing checks.

The Witness: None whatever. They have nothing to do with our bank accounts, absolutely not.

By Miss Calkin:

Q. Who does have authority to check on those accounts?

A. The general officers of the company, any two, the president, vice-president and general manager,

(Testimony of David Hiram Foote.)

vice-president [355] and assistant to the president, secretary and treasurer, any two of those officers, and any one of those officers with certain assistant treasurers and assistant secretaries.

Q. Who, in your organization, has charge of the purchase of bonds to meet sinking fund requirements?

The Witness: I didn't get that.

(The question referred to was read by the reporter as above recorded.)

A. That has been delegated to—well, Mr. Beckett usually attends to it, the assistant treasurer. He is in the president's office and he consults with the president about purchasing bonds for sinking funds.

Q. Do you know whether or not Mr. Beckett confers with the representatives of the North American Company in reference to the purchase of bonds for sinking fund purposes?

A. I think not; to the best of my knowledge, no.

Q. I notice on referring to page 3 on the amended application, the Roman numeral three, this statement is made beginning on the bottom of page 2: "San Joaquin Light & Power Corporation is now in the process of winding up its affairs and has distributed to Pacific Gas and Electric Company all of its operating properties and other assets except a sum of money held in reserve for eventual distribution to certain minority common stockholders

(Testimony of David Hiram Foote.)

whose rights have not yet been judicially determined." [356]

Can you tell me, Mr. Foote, what determination of the rights of those minority common stockholders is being made? A. It is in——

Mr. Bosley (interposing): I think that is a question that had better be addressed to me.

The Witness: Well, it is in the court in Fresno. What I was going to say, it is in the course of litigation in the court in Fresno.

Miss Calkin: Well, can you, Mr. Bosley, make a statement concerning that?

Mr. Bosley: The minority common stockholders of San Joaquin Light & Power Corporation who own 353 shares of common stock of record of that company—three of those shares stand of record in the name of a person whom we have been unable to find, whose address or whereabouts have not been known over a number of years. The other 350 shares are owned by—well, 150 shares owned by a man who lives here in San Francisco, a hundred shares owned by a man who lives in Portland, and then there are two people who are represented by an attorney at Merced who, I believe, live in the vicinity of Merced or Madera who own 50 shares, two guardians for some minors, the Pacific Gas and Electric Company being the owner of all of the rest of the shares executed a written consent to the winding up and dissolution of the San Joaquin Light & Power Corporation. [357]

(Testimony of David Hiram Foote.)

It undertook to assume all of the outstanding obligations of San Joaquin Light & Power Corporation except such as might be paid by the San Joaquin Corporation itself during the period of winding up.

The San Joaquin Light & Power Corporation then, under the provisions of the general corporation law of this state, filed a petition in the Superior Court in Fresno County for the purpose of determining the rights of all classes of shareholders in respect to its assets.

The San Joaquin Light & Power Corporation Board of Directors ordered and the officers executed the conveyance of all of the operating properties of the San Joaquin Light & Power Corporation to Pacific Gas and Electric Company which, at the time owned, well, 99—something over 99½ per cent of all of the outstanding stock.

The holders of these 350 shares have contested the validity of the proceedings for winding up, and the method of distribution proposed by the majority stock holder. The method of distribution proposed by the majority stockholder, that is, the Pacific Gas and Electric Company, is that the operating properties, of which I should say that the current assets should be assigned to the Pacific Gas and Electric Company as an amount to be credited on the San Joaquin's indebtedness to the Applicant here, and that the physical properties should be distributed to the Pacific Gas and [358] Electric Company and that a proceeding should be instituted

(Testimony of David Hiram Foote.)

in court for the purpose of determining the fair value of the minority stockholders proportional shares of the distributable assets, that is, of the net assets distributable of the San Joaquin Light & Power Corporation.

Distribution was made on that basis, and the Pacific Gas and Electric Company assumed the payment of the outstanding bonds of the San Joaquin Light & Power Corporation, and the sum of $250,000 was deposited in a bank by the San Joaquin Light & Power Corporation to await the determination of the rights of the holders of these 350 shares, and also some of it was to be applied toward the payment of a final dividend.

There is now on deposit in that fund in a bank here in San Francisco a sum of—Mr. Foote may correct me—I think it is approximately $121,000.

The Witness: That is about right.

Mr. Bosley: To be used in paying to these minority stockholders the amount of money that the court may determine to be the fair value of these minority shares. The minority stockholders, as I say, are contesting it.

Miss Calkin: What is your best judgment as to when that litigation will be terminated?

Mr. Bosley: Oh, Lord knows. The minority stockholders presented demurrers to the petition and the court has ruled with them on that demurrer and I am waiting now to have a [359] judgment entered

(Testimony of David Hiram Foote.)

whereupon we will take an appeal to the higher courts.

Miss Calkin: What is the par value of the common stock?

Mr. Bosley: $100.

Miss Calkin: Well, how far apart is the company and the stockholders in the contention as to the value of the common stock?

Mr. Bosley: I can't say because certain of those stockholders have offered to surrender their stock for $200 per share. Others of the minority stockholders have declined to place any figure upon it.

Miss Calkin: Well, the proposition of the Applicant is to pay those stockholders in cash rather than to give them any part of the stock of the Applicant?

Mr. Bosley: Not the Applicant. The proposition of the San Joaquin Light & Power Corporation, which is pursuant to its agreement with the Applicant, is that in making distribution it will distribute to minority stockholders an amount of money in cash equal to the full value of their proportional shares of the distributable assets when that amount shall be determined. It looks like it will be another one, two or three years before the matter is determined unless we can reach an agreement with the minority stockholders. [360]

Miss Calkin: In the meantime the assets of the San Joaquin Light & Power Corporation have been distributed and the Applicant is operating its properties?

(Testimony of David Hiram Foote.)

Mr. Bo.dey: Yes, has been. The greater part was distributed on December 1, 1938. The remainder was distributed on November 22, 1939, and the reason for the delay until that time rose out of the necessity of obtaining the approval of the proposed transfer of certain Federal Power Commission Licenses by the Federal Power Commission.

By Miss Calkin:

Q. Mr. Foote, I notice according to Applicant's Exhibit No. 16, which is the directors' chart, that Mr. J. S. Drum was not re-elected on April 18, 1930. Can you tell me why Mr. Drum was not re-elected?

A. Well, I think he declined to serve; that is my recollection.

Q. And I also notice by that chart that Mr. Coghlan was elected on April 8th.

A. Mr. who?

Q. Mr. Coghlan. A. Oh, yes.

Q. Was elected on April 8, 1930, and resigned on June 18, 1930. A. Yes.

Q. Do you know the reason for Mr. Coghlan's [361] resignation as of that date?

A. I think it was to create a vacancy in order that another man could be elected.

Q. I notice also that Mr. Black was first elected as a director of the Applicant on June 18, 1930. Would you say that Mr. Coghlan resigned in order to provide a vacancy which might be filled by Mr. Black upon the completion of the transaction?

(Testimony of David Hiram Foote.)

A. Yes, that might have been, yes; that might have been the case. I can't say positively, though, that that was the case without looking at the records.

Q. I notice from the same exhibit that Mr. A. B. C. Dohrmann resigned on June 13, 1930, and that Mr. Guy C. Earl was elected a director on June 18, 1930. A. Yes sir.

Q. Who was Mr. Dohrmann? What interest did he represent?

A. He was—A. B. C. Dohrmann was a very prominent merchant in San Francisco, head of the Nathan Dohrmann concern, big merchants here, very wealthy merchants.

Q. Was he a stockholder of the Applicant?

A. Oh, yes, yes.

Q. Was his resignation requested in order to make available——

A. (Interposing) I couldn't tell you that. [362]

Q. (Continuing) —a vacancy which Mr. Earl might fill?

A. I really don't know that. All I know is the fact that he did resign and Mr. Earl was elected.

The Examiner: Had he disposed of his stock and interest at that time?

The Witness: I think not, no.

By Miss Calkin:

Q. Is Mr. Dohrmann still living?

A. No, he is dead; died some years ago.

Q. I also notice from that exhibit that Mr. Mc-

(Testimony of David Hiram Foote.)

Candless died on January 30, 1930, and that his position on the Board was taken by Mr. Charles L. Barrett. A. Yes.

Q. Who was elected on April 8, 1930 and resigned on June 18, 1930.

A. John McCandless died.

Q. And Mr. Barrett was elected to take his place on the Board and served from April 8, 1930 to June 18, 1930? A. Yes sir.

Q. At which time Mr. Edwin Gruhl was elected?

A. Yes sir.

Q. And served until his death on January 22, 1933? A. Yes sir.

Q. Who was Mr. Barrett? [363]

A. Mr. Barrett was—he was secretary of the San Francisco Gas & Electric Company, one of our subsidiary companies, and when we took them over he became assistant secretary of the Pacific Gas and Electric Company in my department. He was an older man.

Q. He was an employee of the Applicant?

A. Yes, that is right.

Q. And do you know whether or not he resigned in order to make available a vacancy?

A. I think so.

Q. Which might be filled by Mr. Gruhl?

A. I think so, yes. I think it was agreed that they were entitled, as stockholders, to two members of the Board and that was provided for in that way; that is my recollection.

(Testimony of David Hiram Foote.)

Q. They were entitled to two members on the Board of Directors? A. Two or three.

Mr. Bosley: Three members.

By Miss Calkin:

Q. How many members on the Executive Committee are provided for by the bylaws of the company?

A. Five members on the Board and president ex-officio, six members altogether. [364]

Q. Why are there now only five members?

A. Well, simply because the Board has not elected the sixth member; that is the only reason I know.

Q. Have you ever heard any discussions as to why the Executive Committee has been reduced from six to five persons?

A. No, I never have.

Q. Do you know whether or not the North American Company is entitled by virtue of an oral or written agreement with the Applicant to any representation on the Executive Committee?

A. I think not; not that I know of.

Q. Has it ever had any representation on the Executive Committee?

A. Well, I think that Mr. Earl represented them on the Committee.

Q. How frequently have you conferred with Mr. Fogarty or Mr. Freeman or Mr. Black prior to the time he became president concerning matters pertaining to the Applicant's affairs? A. Never.

(Testimony of David Hiram Foote.)

Q. Have you ever been in New York since 1930, Mr. Foote?

A. Well, I went to New York last year which was the first time I had been East since 1912. [365]

Q. And when you were in New York last year did you see Mr. Fogarty or Mr. Freeman?

A. I did not.

Q. Are you acquainted with those gentlemen?

A. Oh, yes, I have met them, but very casually.

Q. When did you meet Mr. Freeman?

A. Oh, Mr. Freeman, I don't know that I have ever met Mr. Freeman, to tell you the honest truth. I was thinking of Mr. Doolittle. I think I have never met Mr. Freeman. Mr. Fogarty I have met out West here. Mr. Fogarty has been in the office of the company, dropped into my office to say How do you do, and shake hands for a few minutes.

Q. Well, did you call on Mr. Fogarty at his office in New York when you were there last year?

A. I did not.

Q. Have you ever been in the offices of the North American Company in New York City?

A. Never have, never have been in the offices of the North American Company.

Q. You have never discussed the Applicant's business with Mr. Fogarty or Mr. Black or Mr. Doolittle?

A. Not prior to Mr. Black's election as president, no, and with the other two gentlemen none at all, never at any time.

(Testimony of David Hiram Foote.)

Q. Have you ever talked to any representative of the [366] North American Company over long distance telephone? A. No, I have not.

Q. I notice that Applicant's Exhibit 23 which shows the votes cast at the annual stockholders meetings for the years 1930 to 1940 discloses that there is no record of individual proxies for the years '32 and '33. Why is that the case?

A. Well, I was advised by counsel at that time it was not necessary to keep proxies.

Q. You mean you just destroyed the proxies?

A. We didn't keep them, just destroyed them.

Q. But since that time——

A. (interposing) Well, since that time there have been some regulations passed by the Federal Power Commission requiring us to retain certain records and among them are proxies, and so we have kept them from that time on.

Q. Are the by-laws which have been introduced in evidence as Applicant's Exhibit No. 27 the by-laws which are effective as of the present time?

A. They are, yes.

Q. They are revised and have all the——

A. (interposing) They have all the amendments in them.

Q. Has any stockholder ever exercised his right to vote his stock as prescribed in Section 307 of the Civil Code [367] of the State?

A. You mean accumulating?

Q. Yes. A. No, they never have.

(Testimony of David Hiram Foote.)

Q. That has never been done to your knowledge?

A. Never been done, no.

Q. Have you ever made any computation to determine how many directors the North American Company could elect if it exercised its cumulative voting rights?

A. Well, no, I have not. That would depend very largely upon the number of shares represented at the meeting, of course, and I have never made a computation of that.

Q. Well, I am not sure that I understand any too clearly how those rights are exercised. If North American owns at the present time about 2,059,000 of the shares of the Applicant, and there are 15 directors to be elected, in casting its vote could North American vote 15 times the number of shares held by it?

A. Yes, they could vote that. They could divide that among as many directors as they might choose.

Q. Every stockholder could do likewise?

A. Every stockholder could do likewise.

Q. So that every stockholder, if they all exercised their cumulating voting rights, would be voting their holdings times 15? [368]

A. Yes, yes, but, of course, they can't vote that for all the directors, you know.

Q. No, I understand that.

A. You understand that.

Q. I mean they could vote that——

(Testimony of David Hiram Foote.)

A. (interposing) They can divide it among 1, 2, 3 or 4, or whatever number of directors they may desire. They can't vote for the whole 15 directors and cumulate——

Q. (interposing) What constitutes a quorum for the transaction of business?

A. Regularly 50 per cent majority of the shares, just over 50.

Q. Have you ever made any computation to determine whether or not a quorum would have been present if North American had not voted its stock at the annual meetings held since 1930?

A. Yes, I think we could get a quorum without any difficulty.

Q. You say you could get one without any difficulty. I mean with the stock whose votes were in. Have you ever made any computation to determine whether or not North American stock was necessary in order that a quorum be present?

A. No, I never have. There has never been any contest. We have always——

Mr. Bosley (interposing): Might I make an interruption? [369] The record of the votes at the stockholders meetings gives you all that information.

Miss Calkin: Yes, I know.

Mr. Bosley: If there is only 52 per cent or 62 per cent of all the stock represented you take out 17 and a fraction per cent and there wouldn't be a majority left.

(Testimony of David Hiram Foote.)

By Miss Calkin:

Q. So that in that event North American would be in a position to break quorum at any stockholders meeting, if it so desired?

A. But the meeting couldn't do anything.

Mr. Bosley: Unless the total vote or the total number of shares represented exceeds 67.71 percent; in other words, if they had 70 per cent or 75 per cent of all the shares present the holders of 17.17 might walk out and decline to vote. Still there would be a quorum.

By Miss Calkin:

Q. But if the holders of only 65 per cent of the stock were present, as I believe one of the exhibits shows has occurred on several occasions, if North American chose to break the quorum it could do so?

A. Yes.

Q. And no meeting could be held?

A. And no meeting could be held. The directors would then hold over because they are elected until their [370] successors are elected and qualified.

Q. Mr. Foote, what contacts do you have with the Vallejo Electric Light & Power Company?

A. Oh, none at all practically. They pay the dividends; get their dividends on their stock; that is the only contact I have.

Q. You do not advise with them concerning corporate matters? A. Not at all.

Q. And do not assist them in keeping their minute books and their corporate records?

(Testimony of David Hiram Foote.)

A. Not at all.

Q. Have you ever discussed the operating policies of Vallejo Electric Light & Power Company?

A. Oh, no, not at all.

Q. With representatives of that company?

A. No, not at all, not at all.

Q. Did you participate in the negotiations culminating in Applicant's acquisition of the subsidiaries of Western Power Corporation?

A. No, I did not.

Q. Who carried on those negotiations, if you know? A. Mr. Hockenbeamer.

Q. With whom did he carry them on, if you know?

A. I think he went to New York and carried them on [371] in New York very largely.

Q. Do you know whether or not Mr. Black was in California in connection with those negotiations at any time?

A. No, I can't—I don't know that.

Mr. Bosley: Pardon me. I am not sure to what you are referring; what negotiations?

Miss Calkin: The negotiations leading up to the——

Mr. Bosley (interposing): The purchase of the stock?

Miss Calkin: The Applicant's acquisition of the securities of Western Power Corporation.

Mr. Bosley: That is all right.

(Testimony of David Hiram Foote.)

By Miss Calkin:

Q. Was anyone in Applicant's organization active in carrying on those negotiations, to your knowledge, other than Mr. Hockenbeamer?

A. No, I think not, although I know that he talked with me about it occasionally, and I know he consulted other members of the Board of Directors. Mr. Hockenbeamer and I were very intimate friends.

Q. But you think that he was spokesman for the Applicant so far as its dealings with the North American people were concerned? A. Yes.

Q. Do you know who first proposed that the Applicant [372] acquire these properties, whether the proposal came from North American or from the Applicant? A. No, I do not.

Q. When did you first hear of the proposed acquisition?

A. I think shortly before it occurred, within six months before it occurred.

Q. Did you consider the acquisition advantageous to the Applicant? A. Yes, I did.

Q. For what reasons?

A. Well, one of the reasons was the operating facilities, many of their lines parallelled ours making it unnecessary expenditure of capital and, of course, they had to have a double force of meter readers and a double force of bookkeepers and all that sort of thing. The economies were quite evident in consolidating the system because they operated in some of the same territory that we did. Then,

(Testimony of David Hiram Foote.)

in addition to that I learned—I heard it stated from the engineers that their facilities, that their hydro-electric facilities would work in very beautifully with ours, economically, that we could utilize their hydro-electric facilities along with ours, and in a very economic management.

Q. Are you acquainted with Lake Almanor?

A. No, I am not; I have never been there. [373]

Q. Well, you have heard of the lake?

A. Oh, yes, Lake Almanor.

Q. Who owned that property prior to 1930?

A. Oh, I think the Great Western Power Company of California.

Q. Was that considered a valuable asset to a utility company? A. Yes, it was.

Q. Did you ever hear anyone say whether or not the Applicant desired to acquire—I mean, that that was one of the factors motivating the Applicant in its desire to acquire the properties?

A. Yes, that was one of the arguments in favor of it, yes.

Q. You were a member of Applicant's Board when Standard Gas & Electric Company acquired a large block of its common stock, were you not?

A. We what?

Q. You were a member of Applicant's Board when Standard Gas & Electric Company acquired a large block of its common stock, were you not?

A. Yes, yes.

(Testimony of David Hiram Foote.)

Q. Do you recall whether or not that company, that is, Standard Gas & Electric Company, was required to give [374] a written assurance as to its participation in Applicant's affairs and disposal of its stock? A. No.

Q. You have no knowledge of any such written agreement? A. No, no.

Q. Do you know whether or not North American was requested to give any assurance as to the extent of its participation in the affairs of the Applicant?

A. I think not; I think nothing of the sort was done; I never heard of it.

The Examiner: What was the answer?

(The answer referred to was read by the reporter as above recorded.)

By Miss Calkin:

Q. Did you participate in or overhear any discussion during the negotiations preceding the acquisition of the securities of Western Power Corporation concerning the extent to which it was contemplated North American might thereafter participate in any of the Applicant's affairs?

A. I think there was no discussion of that. It was generally understood that they would not participate, however, I know that.

Q. What did that understanding arise out of? Who acquainted you with it? [375]

A. As far as I am concerned it was simply what I heard other directors speak of; Mr. Hockenbeamer.

(Testimony of David Hiram Foote.)

Q. Where was that discussion? At Board meetings?

A. No, I think private conversation with me, probably.

Q. You mean between you and Mr. Hockenbeamer? A. Yes, yes.

Q. What is your best recollection as to what Mr. Hockenbeamer told you in regard to that matter?

A. Well, I know his understanding was that there would be no participation in the affairs of the Pacific Gas and Electric Company by the North American Company by reason of their acquiring any stock, although it was common sense that if they acquired a large block of stock they would be entitled to representation on the Board of Directors.

Q. Were any other of your large stockholders then or are they now represented on your Board?

A. Standard—the Standard Company that you just spoke of had representation on our Board at one time.

Q. That was Mr. John J. O'Brien?

A. Yes sir.

Q. Is that company now represented on your Board? A. No, they are not.

Q. Have they ever sought representation and been refused? [376] A. Not to my knowledge.

Q. Are any other large stockholders other than North American and Standard represented on your Board?

(Testimony of David Hiram Foote.)

A. No—well, only in a general way; I think no particular group.

Q. Has the Sun Life Assurance Company, to your knowledge, ever requested representation on the Board? A. No, they have not.

Q. And it has never been represented?

A. No.

Q. Do you consider Mr. Miller a representative of the Pacific Lighting Corporation—is that the name?

Mr. Gerdes: Yes.

A. No, not on our Board of Directors. Mr. Miller is considered to be a very valuable member on the Board. He is one of the oldest utility men in California and his advice and opinions would be highly valued by the members of the Board of Directors; I know that; I know they all would value them.

Q. Prior to the consummation of the transaction by which North American or its subsidiary, Western Power Corporation, acquired a large block of the Applicant's stock, did you ever hear any of the directors say that they were apprehensive, or say that in substance, as to North American's possible domination of the Applicant in the [377] future? A. No, I never did.

Q. Was that a matter which, as you now recall, was given no particular consideration at that time?

A. It was not, no. I don't remember any talk about it in Board meetings.

(Testimony of David Hiram Foote.)

Q. Did you have any discussions with Mr. Black concerning the acquisition of these securities prior to the time the deal was consummated?

A. No, I did not.

Q. There was an understanding, was there not, Mr. Foote, that when North American acquired the securities of Western Power Corporation's subsidiaries that it would be entitled to representation upon Applicant's Board, and upon its Executive Committee?

A. I believe there was some oral agreement or oral statement, but I have no personal knowledge of it.

Q. Do you know who entered into that agreement on behalf of the parties?

A. I think Mr. Hockenbeamer, but I don't think there was any agreement. I think it was just friendly talk on the subject.

Q. Well, did Mr. Hockenbeamer acquaint the Board with that understanding? [378]

A. Not in my presence.

Q. When did you first learn of it?

A. Well, you mean that there was such an agreement?

Q. Yes.

A. Well, I think Mr. Hockenbeamer told me himself that they wouldn't—that North American Company would take no action but, of course, they would be entitled to a few directors, something of that sort very casually.

(Testimony of David Hiram Foote.)

Q. And you do not know whether or not all members of the Board were familiar with that arrangement at the time it was made?

A. No, I do not know that.

Q. Was the agreement, as I understand it—is my understanding correct that North American was to be entitled to three representatives on your Board?

A. Well, I don't know where I got the idea, but I did have that idea that that was agreed to.

Q. North American at present has only two representatives on your Board? A. Yes, yes.

Q. Does it not? A. Yes.

Q. Can you name the directors of the Applicant who have been representatives of the North American Company on your Board? [379]

A. Well, Mr. Black before was a representative of the North American Company, and Mr. Earl, Guy Earl, and also the—well, there was Mr. Doolittle, Mr. Dame, Mr. Gruhl and the present directors, Mr. Freeman and Mr. Fogarty.

Mr. Bosley: The periods of their incumbency is all shown in this exhibit, is it not?

The Witness: Yes.

By Miss Calkin:

Q. Now, the individuals that you have named constitute the only representation on your Board had at any period by North American Company?

A. Yes, that is right.

(Testimony of David Hiram Foote.)

Q. And Mr. Gruhl, do you know what position he occupied with the North American Company during the time he was director of the Applicant?

A. I think he was president, wasn't he?

Q. What about Mr. Dame?

A. I think he was president also.

Q. What about Mr. Doolittle?

A. Mr. Doolittle was vice-president, I understand.

Q. And Mr. Black?

A. Mr. Black, I think, also was a vice-president.

Q. Mr. Freeman?

A. Mr. Freeman, I think, a vice-president.

Q. And Mr. Fogarty? [380]

A. Mr. Fogarty was president or chairman of the Board; I don't know which.

Q. Do you know what Mr. Fogarty's present position with North American Company is?

A. I think it is president, isn't it? I don't really know positively. I believe it is president.

Q. Do you know why North American now has only, and has had since, I believe, the early part of '36 only two representatives on your Board of Directors?

A. I think there is no particular reason, just simply they don't seem to care, don't seem to want it. In other words, I think they are satisfied with the management of the company out West.

Q. Did you ever know whether or not anyone from your organization communicated with North

(Testimony of David Hiram Foote.)

American and asked them to have only two representatives on the Board so that Mr. Palmer might be elected?

A. I think not. I think there was no such request made. I never heard of it.

Q. Has anyone representing North American ever indicated to you that its representation on the Board was not as important since Mr. Black has been president of the Applicant as such representation was during Mr. Hockenbeamer's lifetime?

A. No.

Q. Do you consider Mr. Black as a representative [381] of North American on the Applicant's Board? A. Absolutely not.

Q. And have you ever considered him as such a representative?

A. Not since his election as president.

Q. Do you know why Mr. Palmer was placed on your Board? A. Why who?

Q. Why Mr. Palmer was elected to your Board?

A. Well, because he was a prominent business man in San Francisco, thought to be a valuable—thought his ideas and his opinions might be valuable in connection with the operation of the company.

Q. Can you describe the routine procedure for the election of the members of the Proxy Committee, or what you speak of as "proxies" and the making out of notices and so forth, Mr. Foote?

(Testimony of David Hiram Foote.)

A. There is no formality about it. About the time it is necessary to ask for proxies in order to have an annual meeting I generally go up and see the president and ask him whether he wants—whether he suggests any change, or should there be any change, and he says "no, the same, just follow the same procedure as you did last year", and that is all there is to it.

Q. Well, now, does the Board aprpove the Proxy [382] Committee?

A. Not formally, although the last few years——

Q. (interposing) Does it approxe the form of the proxy notice? A. Pardon?

Q. Does it approve the form of the proxy notice?

A. No, but it does approve—you know, in the last few years there has been a regulation by, I think, the Securities and Exchange Commission regarding a proxy statement that has to accompany a request for proxies. Now, the Executive Committee or Board has always approved that proxy statement that is sent out. Prior to that regulation we didn't send any such statement.

Q. Well, the members that are to compose the Proxy Committee which have always, I believe your testimony shows, been the president, the general manager and yourself——

A. And the treasurer.

Q. And the treasurer—— A. Yes sir.

(Testimony of David Hiram Foote.)

Q. You say the president has selected those persons? A. Yes, yes.

Q. And then you have had their names placed on the proxy? A. Yes. [383]

Q. That has been sent out?

A. I have them printed; it is all done in my office.

Q. That is sent out by the office here?

A. It is sent out by office, yes.

Q. Where are those proxies returnable?

A. The bylaws of the company provide that proxies from stockholders shall be filed with the secretary of the company so that the proxy—the envelopes are addressed to the secretary in accordance with our bylaws.

Q. There are stamped, self-addressed envelopes sent out with the proxies?

A. Yes; we stamp—sometimes we do and sometimes we haven't. There is two ways of doing it, you know. You can pay for the enclosure after it is received, or you can put stamps, and it costs a little more to pay for it upon receipt, but it amounts to about the same thing. We have generally followed the plan that would cost us the least in postage.

Q. And the directors do not approve the notice of the annual stockholders meeting or the proxy committee? A. No.

Q. That isn't handled by the directors at all?

A. The bylaws require no notice. We don't have to give a notice of annual meetings at all. The proxy

(Testimony of David Hiram Foote.)

statement that is sent out is prepared under regulation of the Security [384] and Exchange Commission, I believe.

Q. And the recommendations of the president as to whom the proxies shall be, as made to you, have always been followed? A. Yes sir.

Q. During your period of office?

A. Yes, yes.

The Examiner: Is it the Board or the Executive Committee that approves this proxy statement that is now required?

The Witness: I think it is usually the Executive Committee because they meet every week. The Board meetings are not so frequent, and the Executive Committee approves it.

By Miss Calkin:

Q. Well, now, the proxy statement under the present rules and regulations of the Securities and Exchange Commission must state the names of the directors whom the proxies intend to cast their votes for? A. Yes.

Q. Now, who makes up that slate of directors?

A. Why, the directors—well, it has been the incumbent directors in every case.

Q. And the directors, in approving the proxy statement, approve their insertion of their names in that proxy statement? A. Yes, correct.

Q. At whose suggestion do you first put those names [385] in the proxy statement?

(Testimony of David Hiram Foote.)

A. Why, I think at the suggestion of the president and it would be with the—I know that it is with the consent of the Executive Committee. They are always in perfect accord in those things.

Q. Well, is the proxy statement in a printed and final form at the time it is approved by the directors? A. Yes, it is.

Q. And the names of the——

A. (interposing) The names and number of shares held by each in accordance with those regulations is all stated in there.

Q. Does Mr. Black advise you as to who North American's nominees for directors for the ensuing year will be?

A. The president, yes, I think, has always advised me that.

Q. During Mr. Black's presidency Mr. Freeman and Mr. Fogarty have been the only representatives on your Board? A. Yes.

Q. From North American? A. Yes.

Q. And their names have been included in this slate at Mr. Black's instructions? A. Yes.

Q. Has he ever told you who has advised him or how [386] he has been advised as to who North American wants on its Board, for representation on the Board? A. No, he has not.

Q. Who, in your opinion, Mr. Foote, other than employees of the Applicant, have been the most active directors on your Board?

(Testimony of David Hiram Foote.)

A. Oh, there has been a number of them; Mr. Miller, Mr. Elsey, Mr. Livermore, Mr. Palmer; they are all active; Mr. McKee, Mr. McIntosh of the Bank of California, Mr. Nichols, Mr. Crocker; they are all active; they are all very attentive to meetings.

Q. And take an active interest in the company's affairs?

A. Take an active interest in the company's affairs and enter into discussions very fully.

Q. Could you compare the functions of the Board with those of the Executive Committee?

A. Well, the Executive Committee, of course, meets every week, and being a smaller body it can give more attention to details of operation, and it does do so, and under the bylaws of the company actions of the Executive Committee between meetings of the Board have all the authority of the Board of Directors.

Q. Well, now, at the meeting of the Board of Directors immediately succeeding the meetings of the Executive Committee [387] held in the interval, does the Board approve the action of the Executive Committee taken during that interval?

A. They do not.

Q. Such approval is unnecessary by reason of the fact that the Executive Committee has the authority which you have just mentioned?

A. Yes, that is it. I believe that authority is

(Testimony of David Hiram Foote.)

given by the laws of the State of California, as well as by our bylaws.

Q. Does Mr. Black ever advise the Board as to recommendations made to him by North American, the North American Company on matters which he submits to the Board?

A. It never occurred to me he did so; he has never done so in my presence.

Q. Since you have been a director have you never been advised from any source what North American's desires were with respect to a particular matter? A. Never.

Q. Has any member of the Board at a meeting attended by you ever inquired of Mr. Black whether he has conferred with North American representatives on a major problem and, if so, what suggestions were made by North American?

A. I think not, never. I can say I am quite sure that there has never been such a question asked.

Q. What weight, in your opinion, should be given to [388] any recommendations which North American might make in view of the fact that North American is the largest stockholder of your company?

A. That is a pretty hard question. (pause) I think that, as a large investor in our stock, their opinion ought to be given consideration surely, and if it was in accord with good business principles and to the best interests of the company, it might be followed, but if it was not, it should not be fol-

(Testimony of David Hiram Foote.)

lowed, that is all there is to it, and I wouldn't vote for it.

Q. Do you recall Mr. Hockenbeamer ever having advised the Board of suggestions made by North American during the time he was president?

A. No, I think not.

Q. Did Mr. Earl ever acquaint you or the Board at a meeting attended by you of the desires of North American Company during the time when he was a director of your company?

A. No, he never did.

Q. But he was the most active representative of North American that Applicant has ever had on its Board?

A. Yes, I think so; I think he was.

Q. Did he ever tell you that he kept North American fully informed as to the activities of the Board, and the Executive Committee? [389]

A. No; he told me that he sent to the North American Company the reports that were submitted to the Executive Committee.

Q. Mr. Foote, I hand you what has been marked for purposes of identification Commission's Exhibit No. 5 and will ask you if you have ever seen the original of the document which that purports to be a copy of?

A. (Examining document) Yes, I think that is all right. That must have come from my—that must have come to me because it is addressed to me and,

(Testimony of David Hiram Foote.)

as a matter of fact, I have followed the requests since Mr. Earl's passing.

Miss Calkin: We offer in evidence Commi sion's Exhibit No. 5.

The Witness: I think that was at the commencement of my sending those reports. I know it was.

The Examiner: Have you a large number of these documents that you will offer now?

Miss Calkin: I haven't got a lot of them. I have got a few.

The Examiner: It is about 20 minutes past four. We are going to adjourn pretty soon at a convenient time, a convenient place for you, I mean.

Miss Calkin: I will just ask a few more questions.

Has that been admitted?

The Examiner: May I have that, Mr. Foote? [390]

(The document was handed to the Examiner.)

The Examiner: If there is no objection, this photostat of a memorandum of July 3, 1935, will be received in evidence and marked Commission's Exhibit 5.

(The document referred to above was marked Commission's Exhibit 5 and was received in evidence.)

By Miss Calkin:

Q. Mr. Foote, has there ever been any major difference of opinion between your Board and Mr.

(Testimony of David Hiram Foote.)

Black since he has been president of the Applicant?

A. No, there has not.

Q. Do you recall the Board ever having disapproved of matters submitted and recommended by Mr. Black? A. No.

Q. Was the relationship between the Board and Mr. Hockenbeamer at all times harmonious?

A. Entirely so.

Q. Do you feel free to act as a director or officer upon a major problem pertaining to the Applicant's affairs without consultation with or obtaining the viewpoint of North American Company?

A. Oh, yes, absolutely. I wouldn't take the recommendation of anybody unless I thought it was right.

Q. In view of the fact that Mr. Earl was an active member of your Board it is true, is it not, that North [391] American's representatives on your Board have been less active since Mr. Black's presidency than they were under Mr. Hockenbeamer's presidency?

The Witness: Will you read that, please?

The Examiner: Read it, Miss Reporter.

(The question referred to was read by the reporter as above recorded.)

A. Well, I think they have been less active since Mr. Earl's death, but I cannot tie that in exactly with Mr. Black's election to the presidency.

(Testimony of David Hiram Foote.)

By Miss Calkin:

Q. Well, Mr. Earl, I believe Applicant's Exhibit No. 16 shows died June 25, 1935, and——

A. (interposing) Mr. Hockenbeamer died in August, didn't he?

Q. No, in November of 1935.

A. Yes, and Mr. Black was elected——

Q. (Interposing) Became president in the same month.

A. Yes, but Mr. Hockenbeamer was in full possession of his faculties and active when Mr. Earl died.

Q. Yes, but there has been no member, no representative of North American Company——

A. (interposing) Not since Mr. Earl died.

Q. (continuing) Active on your Board since Mr. Earl's [392] death?

A. I don't tie that in with Mr. Black's election at all because at the time of Mr. Earl's death, why, it was not thought that Mr. Hockenbeamer was going to die. He was president and there was no thought of any other president at that time.

Q. No, but Mr. Black became president within three or four or five months after Mr. Earl's death?

A. Oh, yes, of course, that was the natural—that was just—that was not contemplated at all when Mr. Earl died.

Q. No, I understand that.

A. In other words, there was nobody put in Mr. Earl's place while Mr. Hockenbeamer was president

(Testimony of David Hiram Foote.)

and I can't tie it in at all with Mr. Black's election to the presidency, in other words.

Q. Without tying it in, it is true that since Mr. Earl's death—put it that way—which occurred in June of 1935, North American has not had any active representation upon your Board of Directors?

A. No, no, not as active as he was.

Q. Who prepares your annual report to stockholders, Mr. Foote?

A. Well, it is prepared in the president's office and a number of departments help in it. [393]

Q. The final draft is prepared in the president's office?

A. Yes, the final draft is prepared in the president's office.

Q. Do you know whether or not a draft of your annual report to stockholders is submitted to the North American Company prior to the time it is submitted to your Board?

A. I think not; I think not, absolutely not; I never heard of it.

Q. Then, it is your best judgment that North American does not receive a copy of the annual report to stockholders until it is mailed out to all of the stockholders? A. That is my idea.

Q. That North American furnishes your company no advice or suggestions in connection with the preparation of that report?

A. No, I think not.

(Testimony of David Hiram Foote.)

The Examiner: Before we recess I would like to have the record show there have been, during the course of the day's session, from one to three persons present other than witnesses, counsel and parties, and I should like the record also to show that at these sessions of the hearing so far there has been present a gentleman who is an attorney admitted to practice in all the California Courts, perhaps, elsewhere.

I didn't get your name? [394]

Mr. McComish: John D. McComish of Pillsbury, Madison & Sutro.

The Examiner: Mr. McComish, I believe you are connected with the——

Mr. McComish: Standard Pacific Gas Lines.

The Examiner: Standard Pacific Gas Lines, Inc.

We will recess now until 10:00 o'clock tomorrow morning here.

(Whereupon, at 4:30 p. m., an adjournment was taken to Friday, November 15, 1940, at 10:00 a. m.) [395]

No. 9918

United States

Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC GAS AND ELECTRIC COMPANY, a Corporation,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

Transcript of Record

In Four Volumes

VOLUME II

Pages 473 to 973

Upon Petition to Review an Order of the Securities and Exchange Commission.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

Proceedings

The Examiner: Whenever you are ready.

Whereupon——

DAVID HIRAM FOOTE

was produced as a witness for and on behalf of the Applicant and having been previously duly sworn, testified further as follows:

Cross Examination
(Resumed)

By Miss Calkin:

Q. Mr. Foote, what do you know about Mr. Black's selection as president of the Applicant?

A. What do I know about his election as president?

Q. Yes, his selection?

A. Oh, his selection. He was selected by the more prominent members of the Board of Directors and was nominated by—I have forgotten just who nominated him—but he was nominated by one of the prominent directors of the company.

Q. Well, who do you have reference to when you refer to the more prominent members of the Board?

A. Well, Mr. C. O. G. Miller, Mr. John D. McKee and Fred Elsey, I think, was alive then, and Mr. Allen Chickering.

Q. Well, who did you first hear mention the possibility of Mr. Black being selected?

A. At the meeting of the Board of Directors at which he was elected. [397]

(Testimony of David Hiram Foote.)

Q. At the same meeting at which he was elected?

A. Yes sir.

Q. That is the first knowledge you had that Mr. Black was being considered for the presidency?

A. It was.

Q. How long did that meeting occur after Mr. Hockenbeamer's death?

A. I think within a month.

Q. Well, did you hear any discussions prior to that Board meeting concerning Mr. Hockenbeamer's successor? A. No, I can't say that I did.

Q. Was anyone else ever considered for the presidency of the company?

A. Not at that Board meeting.

Q. Did you hear the matter discussed at any Executive Committee meeting preceding the Board meeting?

A. No, I did not; it was not discussed.

Q. Well, now, what was said at the Board meeting that you can now recall concerning Mr. Black's election?

A. It was stated that these gentlemen had consulted with other members of the Board and thought that Mr. Black would be a most suitable person to occupy that position, and they nominated him as president.

Q. Do you know whether or not at that time any member of the Board had conferred with Mr. Black?

[398]

(Testimony of David Hiram Foote.)

A. No, I do not.

Q. There was nothing said at that Board meeting concerning any contact between any member of the Board and Mr. Black?

A. No, no. Well, it may have been stated that they had talked to Mr. Black about it, or had discussed it with him. I have forgotten that; I think very probably that would be the case.

Q. Do you know whether or not the matter had been discussed with Mr. Fogarty or Mr. Freeman prior to the time of Mr. Black's selection?

A. No, I do not.

Q. You don't recall any director having said that they had talked the matter over with Mr. Fogarty?

A. No.

Q. And Mr. Black was unanimously elected to the position he now holds? A. He was.

Q. Do you recall any discussion which occurred at the meeting of the Board at which Mr. Black was elected concerning the possibility that by reason of Mr. Black's former association with the North American Company and its subsidiaries that he might be influenced and dominated by North American?

A. I don't recall any discussion of that kind; I think [399] there was none.

Q. So far as you now recall there was no consideration given to the possibililty that he might be influenced by North American?

(Testimony of David Hiram Foote.)

A. No, as far as I can remember there was no discussion.

Q. Do you know whether or not before Mr. Black was elected he gave any assurances to any member of the Board as to what his future action toward North American might be?

A. I have no—no, nobody ever discussed that with me at all.

Q. Did you, as a member of the Board, give any consideration to the fact that by reason of Mr. Black's former association with North American Company he might be influenced by them in his activities as president of the Applicant?

A. No. Although, of course, I did have in mind this fact: That the company had always been managed by the western contingent, by western men. The East had never had—no eastern concern or men had ever had any influence in the actions of our Board, as far as I know; in fact, I know that is a fact, at least, not in any of the formal meetings there was no discussion of that kind. Of course, I don't know what took place outside of Board meetings.

Q. Do you know of your own personal knowledge the extent of Mr. Black's contacts with the North American people [400] since he has been president of your company?

A. Since he has been president?

Q. Yes. A. No, I do not.

(Testimony of David Hiram Foote.)

Q. You don't know how frequently he corresponds or communicates with them regarding affairs of the Applicant? A. I do not.

Q. It would be possible for Mr. Black to seek and obtain advice from North American Company regarding the problems of the Applicant without your knowledge, would it not, Mr. Foote?

A. Yes, surely.

Q. How well acquainted were you with Mr. Black prior to the time he became president of the Applicant?

A. Very casually, hardly at all. I only knew him by reputation.

Q. You had very few personal contacts with him? A. Very few.

Q. Were you well acquainted with any representatives of the North American Company in 1935?

A. No, I was not.

Q. In your opinion, was the fact that the Board felt that North American should play a larger part in Applicant's activities one of the reasons why the directors selected Mr. Black as Mr. Hockenbeamer's successor? [401]

A. No, I had no such thought.

Q. Have any major changes in Applicant's operating or financial policies occurred since Mr. Black has been president of your company?

A. No.

Q. What is your personal feeling concerning the desirability of North American playing a major

(Testimony of David Hiram Foote.)

role in the management policies of the Applicant, Mr. Foote?

A. I can't see where it would be of the slightest advantage to the Pacific Gas and Electric Company.

Q. Would you personally resent any attempt to dominate the policies of the Applicant on behalf of the North American Company?

A. You say "resent"? I wouldn't have any resentment, but I would certainly disprove of it.

Q. Now, it is true, so far as you know, isn't it, Mr. Foote, that North American is furnished reports by the Applicant which are not furnished to all of its major stockholders?

A. North American is not furnished with that; the directors of the company are furnished with it, the eastern directors, because they have no opportunity to attend the meetings.

Q. Do you have anything to do with the preparation of the budget? [402]

A. Yes, yes; I prepare the budget for the Board of Directors of formal matters that are ready for action by the Board.

Q. In other words, a draft of the budget is submitted to you by Mr. Downing?

A. Well, I pickup the budget for the Board of Directors and——

Q. (Interposing) You prepare the final draft?

A. I prepare the draft. The resolutions are sent to me by the Law Department and I prepare that

(Testimony of David Hiram Foote.)

budget and send it up to the president the morning of the meeting.

Q. Well, do you, prior to the time the budget is sent by you to the president, send a copy of the proposed budget to the North American Company?

A. No, I send it to nobody; nobody gets it but Mr. Black.

Mr. Bosley: Are you referring to the annual budget or to these current statements that go out?

Miss Calkin: No, I am referring to the annual budget, not these current matters that are sent to—

The Witness (interposing) The annual budget, I thought you said. Pardon me. I confused it with the agenda for the Board. Do you mean the budget?

By Miss Calkin:

Q. The annual budget of the company. [403]

A. The annual budget, that is prepared by the general manager.

Q. Well, do you have anything to do with that?

A. No, I do not. Pardon me. I do not have anything to do with the budget.

Q. Well, do you know whether or not a draft of the proposed annual budget is sent to North American?

A. No, I don't know; no, I do not. I was thinking of the agenda for the Board.

Q. Do you know whether or not North American has ever suggested changes in the proposed budget prior to the time it was approved by the Board?

A. I do not.